IN THE

Supreme Court of the United States

October Term, 1972
No. 71-1456

SALYER LAND COMPANY, *et al.*,

Appellants,

vs.

TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district,

Appellee.

Appeal From the United States District Court, Eastern District of California.

APPENDIX.

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APPENDIX

INDEX TO APPENDICES

Chronologicial List of Relevant Docket Entries.

DATE	PROCEEDINGS
5/5/70	Fld cmplt; iss sums. JS-5
6/1/70	Fld sums retd svd.
6/9/70	Fld stipln & ord thereon that deft has to 7/10/70 to answer, etc.
6/6/70	Fld stipln & ord thereon that hrng on defts motn to dismis may be contd to 9/21/70.
6/26/70	Fld dft's notc of motn & motn to disms, notc for hrng on 8/10/70
91/70	Fld deft's supplmntl memo of pts & auth in support of motn to disms.
9/18/70	Fld pltf's memo of Pts & authys in oppostn to Mtn to dismiss.
9/21/70	Ent prcdgs on hrng on deft's motn to dismiss as to Tulare Lake, etc. Ord stand submtd. Briefs to follow.
10/2/70	Fld reply memo of pts & auth of deft.
11/13/70	Fld memorandum & order denying deft's motn to dismiss & ordered a three judge court be convened. Mld copies to respectv cnsl.

11/20/70

Fld deft's request & ord thereon that deft has to 12/15/70 to file answer.

12/14/70

Fld answer of deft, Tulare Lake Basin after Storage Dist.

12/16/70

Fld copy of letter of Judge Crocker to respctv cncl setting April 29 & 30 for trial of this 3 judge case. Discovery to be completed 30 days prior to trial & trial briefs to be submitted to all three judges 10 days prior to trial.

3/10/71

Fld letter from Judge Crocker to respctv patys advancing trial date of 3 judge court from April 29 & 30 to April 22 & 23, 1971

3/12/71

Fld letter from Judge Crocker to respctv ptys tenatively re-setting trial dates for June 16, 17 & 18.

4/20/71

Mld notc of trial by three-judge court to Gov. Reagan & Atty Genl in compliance with 28 USC 2284.

4/30/71

Fld pltf's request for admissions.

5/24/71

Fld deft, Tulare Lake Basin Water Dist answers & objections to requests for admission of Salyer Land Co.

6/1/71

Fld ex parte order that California Central Valleys Flood Control Assn is granted permission to file an amicus curiae brief.

6/4/71

Fld plaintiff's trial brief.

6/7/71

Fld deft's trial brief. Mld copies to Judges Browning & Schnacke.

6/9/71

Fld Ptn of Denslow Green & ORD thereon to app as amicus curiae on behalf of Irrigation Districts of Calif.

6/10/71

Fld Plaintiff's statement of facts.

6/10/71

Fld Plaintiff's list of exhibits.

6/11/71

EX PARTE ORD Purs to req of cns for pltf & with concurrence of counsel for defts ORD trial date of 6/16/71 be vacated & set aside and exhibits of resp cnsl to be lodged with clerk and case be submitted on agreed stamnt of facts. Closing Briefs to be filed 15-15-15.

6/14/71

Fld pltf's response to Deft's statement of facts.

6/28/71

Fld brief of Central Valleys Flood Control Assn (as amicus curiae)

7/1/71

Fld Amicus Curiae Brief of Irrigation Dists Ass'n of California.

7/7/71

Fld pltf's opening brief following submission of factual statements.

7/26/71

Fld defendant's opening brief. Mld copies to Judge Browning & Schnacke

8/11/71

Fld pltf's reply Brief following submission of Factual Statements. Mld copies to Judges Browning & Schnacke.

9/30/71

Fld Pltf's supplemental Memorandum. Mld copies to Jdgs Browning & Schnacke

10/4/71

Fld supplmntl memo of defts. Mld copies to Judges

2/17/72

Fld memo & order of Jdg. Crocker & Jdg. Schnacke: Deft ordered to submit a plan to correct malapportionment within 6 mo of date this decision becomes final. If deft unable to redevision the district into divisions which are reasonably equal in assessed valuation & also possess the same general character of water rights or interest in the water of a common source as required by sect 39777 of the Calif. Water Code, the plan may provide for elections at large. Fld concurring in part & dissenting in part opinion of Judge Browning. Mld copies to respctv ptys.

3/10/72

Pur to Jdg Crocker *entered* judgment htf filed on 2/17/72. Mld notc of entry of jdgmt to respctv ptys.

3/14/72

Fld pltf's notice of appeal to the Supreme Court of the United States.

Complaint.

Filed May 5, 1970

C. RAY ROBINSON
650 West 19th Street
Merced, California 95340
Telephone: 209-722-6244

THOMAS KEISTER GREER
Rocky Mount, Virginia 24151
Telephone: 209-483-5332
Attorneys for Plaintiffs

United States District Court, Eastern District of California, Southern Division.

Salyer Land Company, a California corporation, C. Everette Salyer; Fred Salyer; Lawrence Ellison; and Harold Shawl, Plaintiffs, v. Tulare Lake Basin Water Storage District, a public district, Defendant. Civil No. F-414.

NOW COME the plaintiffs Salyer Land Company, a California corporation, C. Everette Salyer, Fred Salyer, Lawrence Ellison, and Harold Shawl, and complain of the defendant Tulare Lake Basin Water Storage District, a public district, as follows:

I

The jurisdiction of this Court is invoked pursuant to the provisions of Section 1343 of Title 28 of the United States Code, that is to say, this is a civil action authorized by Section 1983 of Title 42 of the United States Code to redress the deprivation, under color of State law, statute, ordinance, regulation, custom and usage, of rights, privileges, and immunities secured by the Constitution and Laws of the United States providing for equal rights of citizens or of all persons within the

jurisdiction of the United States. The rights here sought to be redressed are rights guaranteed by the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States, as hereinafter more fully appears.

II

Plaintiff Salyer Land Company is now, and at all times herein mentioned since 1946 has been, a corporation organized and existing under and by virtue of the laws of the State of California. Salyer Land Company farms approximately 28,000 acres of land in Tulare Lake Basin Water Storage District, of which approximately 12,000 acres are owned by it and approximately 16,000 acres leased from others.

III

Plaintiffs C. Everette Salyer and Fred Salyer are citizens of the State of California, are landowners in Tulare Lake Basin Water Storage District, and are members of the Board of Directors of Tulare Lake Basin Water Storage District. Plaintiffs C. Everette Salyer and Fred Salyer own 320 acres of land in the District as tenants in common.

IV

Plaintiff Lawrence Ellison is a citizen of the State of California, a resident of Tulare Lake Basin Water Storage District, and a registered voter. He does not own any land therein.

V

Plaintiff Harold Shawl is a citizen of the State of California and a landowner in defendant Tulare Lake Basin Water Storage District. Plaintiff Shawl owns a one-half undivided interest in 65 acres of land in the District.

VI

Defendant Tulare Lake Basin Water Storage District is a public district organized in 1926 under the California Water Storage District Law, California Water Code Sections 39000 ff., comprising approximately 193,000 acres in Tulare Lake Basin. A map showing the boundaries of said defendant District is attached hereto and marked Exhibit 1.

VII

Section 41000 of the California Water Code is applicable to water storage districts, and at all times material herein it has provided, and now provides, as follows:

> "Only the holders of title to land are entitled to vote at a general election."

VIII

Section 41001 of the California Water Code at all times material herein has provided, and now provides, as follows:

> "Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars ($100), or fraction thereof, worth of his land, exclusive of improvements, minerals, and mineral rights therein, in the precinct."

IX

At all times since its formation in 1926, such elections as have been held in Tulare Lake Basin Water Storage District have been conducted pursuant to and in accordance with said Sections 41000 and 41001 of the California Water Code, that is to say, only landowners have been allowed to vote, and each landowner has

been allotted one vote for each $100 or fraction thereof worth of his land.

X

The J. G. Boswell Company, the largest landowner in Tulare Lake Basin Water Storage District, owns approximately 40 percent of the land therein. The said The J. G. Boswell Company at all times herein mentioned has controlled, and it now controls, Tulare Lake Basin Water Storage District by election of six of the eleven directors, all six of whom receive salaries from The J. G. Boswell Company independent of their compensation as officers and directors of the District. The President, Vice President, and Secretary of the District all are Boswell stockholders who receive regular compensation from said company.

XI

Tulare Lake Basin Water Storage District was divided into eleven divisions at the time of its formation in 1926, and the same eleven divisions are in effect today, there having been no change of the division boundaries for over 40 years. The division boundaries and the numbers assigned to said divisions, are correctly and accurately shown on the map attached hereto as Exhibit 1. There are seventeen separate landowners in Division 1, forty-one in Division 2, thirteen in Division 3, one hundred and ten in Division 4, eleven in Division 5, nineteen in Division 6, seventy-nine in Division 7, one hundred in Division 8, five in Division 9, four in Division 10, and twelve in Division 11. There are approximately 40 residents of the District.

XII

The J. G. Boswell Company maintains its control of Tulare Lake Basin Water Storage District by keeping in force the division boundaries which have existed since the said District was formed in 1926. The sizes of the several divisions, and the assessed valuation of the lands therein, are grossly disproportionate. Division 4, represented by plaintiff Fred Salyer, contains fifty-two sections of land, while Division 10, represented by a vice president of the said The J. G. Boswell Company, A. L. Vandergriff, contains only thirteen and one-half sections. The assessed valuation of the lands in said Division 4 in 1967 was $2,047,620, while the assessed valuation of the lands in said Division 10 was only $624,840. Plaintiffs are informed and believe, and upon such information and belief allege, that the assessed valuations of the lands in Division 4 and Division 10 are at the present time similarly disproportionate. Although required by law until 1969 to be redivisioned following adoption of a project, and not less than 60 days prior to the next general election thereafter to be held in the District, Tulare Lake Basin Water Storage District has not been redivisioned in over 40 years.

XIII

No general water storage district election has been held in Tulare Lake Basin Water Storage District for over twenty-three years, although such elections are required by statute to be held on the first Tuesday in February in each odd-numbered year. In 1967 plaintiffs

and certain other minority landowners petitioned for a special election pursuant to Section 41550 of the California Water Code, which election was held May 23, 1967. But there was no redivisioning prior to said election, there has been no redivisioning since said election, and there was no general water storage district election the first Tuesday in February of 1969, as required by Section 41300 of the California Water Code.

XIV

Defendant Tulare Lake Basin Water Storage District is a governmental entity. There is attached hereto and marked Exhibit 2 an opinion of the Attorney General of the State of California that Tulare Lake Basin Water Storage District is a political subdivision of the State of California. As such political subdivision Tulare Lake Basin Water Storage District has at all times herein mentioned exercised, and it now exercises, the powers of taxation and eminent domain, and it issues bonds which are liens upon all the lands in the District. The said District as a governmental entity has applied for disaster relief from the Office of Emergency Planning pursuant to Sections 1855 ff. of Title 42 of the United States Code, and has been granted public moneys of the United States in response to such application. The defendant Tulare Lake Basin Water Storage District as a public entity has sought permission to intervene as parens patriae in a case pending in this Court wherein the United States seeks to impose acreage restrictions on lands served by Pine Flat Reservoir, and this Court

has recognized Tulare Lake Basin Water Storage District's standing as parens patriae, and has granted its application for such intervention.

XV

The lands in Tulare Lake Basin Water Storage District lie in the southern portion of Kings County, California, and are fertile and highly productive. The said lands are subject, however, to cycles of flood and drought, and the repelling of water in times of flood and the securing of water in times of drought are among the most important functions which can be performed by any governmental agency insofar as the residents and landowners of Tulare Lake Basin Water Storage District are concerned. Plaintiff Ellison alleges that his residence is in the North Central area of Tulare Lake Basin and that floodwaters are now standing against the North Central Levee, which levee protects the North Central area from flooding. Plaintiffs, including plaintiff Ellison, allege that those floodwaters, which reached a height of 192.5 feet U.S.G.S. datum in 1969, would have been three feet lower had Tulare Lake Basin Water Storage District exercised the flood control rights and powers which it possesses. Plaintiffs allege that the Board of Directors of the defendant District, controlled and dominated by The J. G. Boswell Company, failed and refused during the 1969 flood to take action to insure the use of Buena Vista Lake for the storing of floodwaters on the Kern River, as said Lake had always been used in the past, and these plaintiffs allege that such failure and refusal was

occasioned by The J. G. Boswell Company's possession of Buena Vista Lake under a long term agricultural lease.

XVI

The actions and positions of Tulare Lake Basin Water Storage District are of immediate, direct and vital importance to every resident of the District, are of immediate, direct and vital importance to every landowner in the District, and are of immediate, direct and vital importance to every lessee of land in the District. Farmers who lease rather than own land are not accorded the privilege of voting in the District's elections, although the District's functions in flood control and water matters are of immediate, direct and vital importance to such lessees. Plaintiff Salyer Land Company has leased all the lands of Kings County Development Company, a total of approximately 5,000 acres, for a period of 15 years, and plaintiff Salyer Land Company is in possession of said lands, actively farms them, and pursuant to the terms of its lease with the landowner, Kings County Development Company, pays the taxes and assessments on said lands. Salyer Land Company nevertheless derives no voting right whatever by virtue of the said lease, or by virtue of any other of the lands it has leased in Tulare Lake Basin Water Storage District.

XVII

Plaintiff Ellison is 62 years old, and has spent 40 years in the Tulare Lake area. He has held positions of responsibility in farming companies throughout that

time, and is familiar with the problems of water management and flood control with which Tulare Lake Basin Water Storage District is concerned. Plaintiff Ellison desires to vote in Tulare Lake Basin Water Storage District elections, but he will not be permitted to unless this Court so orders.

XVIII

Plaintiffs allege that Section 41000 and 41001 of the California Water Code permitting only landowners to vote in water storage district elections, and permitting each landowner one vote for each $100 or fraction thereof worth of his land, invidiously discriminate against residents who are not landowners, invidiously discriminate against small landowners, invidiously discriminate against all landowners other than the largest, the said The J. G. Boswell Company, invidiously discriminate against farmers who lease rather than own their land, and subject all the residents, landowners and farming operators in Tulare Lake Basin Water Storage District to the rule of a private corporation. The J. G. Boswell Company at all times herein mentioned has made, and it now makes, policy for Tulare Lake Basin Water Storage District, although the president of the said The J. G. Boswell Company is not a director of the said Tulare Lake Basin Water Storage District, and the headquarters of the said The J. G. Boswell Company is in Los Angeles rather than in Kings County.

XIX

Plaintiffs allege that the said Sections 41000 and 41001 of the California Water Code invidiously discriminate against plaintiffs and others similarly situated, deprive plaintiffs and others similarly situated of their rights, privileges, and immunities under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States, and that said Sections 41000 and 41001 of the California Water Code are unconstitutional and void.

XX

Defendant Tulare Lake Basin Water Storage District has enforced, executed and administered Sections 41000 and 41001 of the California Water Code, and unless enjoined and restrained by this Court, defendant Tulare Lake Basin Water Storage District will continue to enforce, execute and administer said statutes, and will continue to deprive, as it has deprived in the past, plaintiffs and others similarly situated with them, of their rights under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

XXI

The damage and injury done to plaintiffs by reason of their being deprived of the foregoing rights is continuing and irreparable, and there is no adequate remedy at law.

WHEREFORE, plaintiffs pray that this Court:

1. Convene a statutory court of three judges pursuant to Section 2284 of Title 28 of the United States Code for the purpose of hearing and determining this cause.

2. Adjudge and declare Sections 41000 and 41001 of the California Water Code to be in violation of the Constitution of the United States, and therefore void.

3. Issue preliminary and permanent injunctions restraining and enjoining the defendant Tulare Lake Basin Water Storage District, and its agents, servants, and employees, from enforcing, executing, administering or in any manner giving effect to Sections 41000 and 41001 of the California Water Code.

4. Require defendant Tulare Lake Basin Water Storage District to submit a plan whereby all residents of Tulare Lake Basin Water Storage District will be allowed to vote, without regard to land ownership, or in the alternative, a plan whereby all residents, lessees, and landowners will be allowed to vote, whether or not such residents be landowners, whether or not such lessees be landowners and whether or not such landowners be residents, but with provisions that no resident, lessee or landowner shall in any event or circumstance have more than one vote, however small or however great his landholdings may be.

5. Require defendant Tulare Lake Basin Water Storage District to submit a plan whereby all elections shall be at large.

6. Require defendant Tulare Lake Basin Water Storage District to hold a general water storage district election not later than the time set forth in Section 41300 of the California Water Code, that is to say, not later than the first Tuesday in February of 1971, or at such earlier time as the Court may direct.

7. Grant plaintiffs all such other and further and general relief as the circumstances of this case may require or to equity shall seem meet.

Dated this 5th day of May, 1970.

C. RAY ROBINSON
THOMAS KEISTER GREER
Attorneys for Plaintiffs

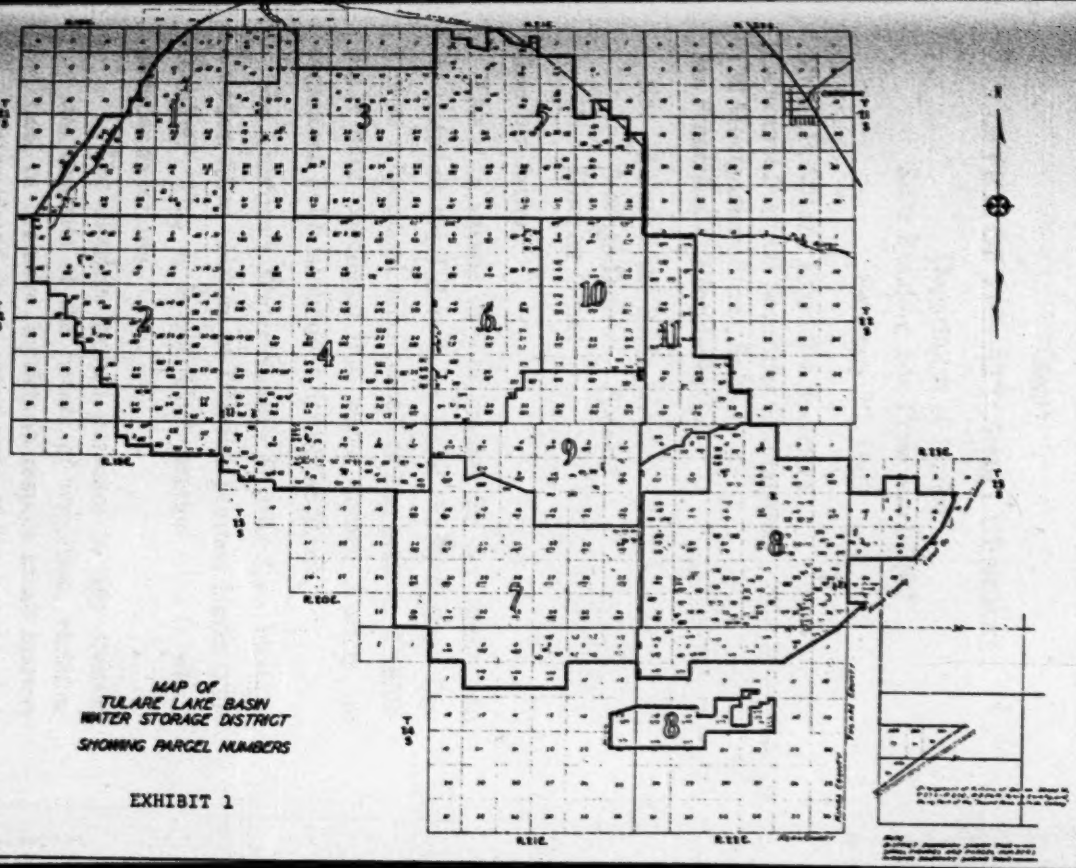
MAP OF
TULARE LAKE BASIN
WATER STORAGE DISTRICT
SHOWING PARCEL NUMBERS
EXHIBIT 1

EXHIBIT 2

(Seal)

OFFICE OF THE ATTORNEY GENERAL

Department of Justice
State Building, San Francisco 94102

February 20, 1969

Mr. T. P. Stivers, Executive Secretary
California Districts Securities Commission
120 Montgomery Street, Suite 1370
San Francisco, California 94104

Re: Tulare Lake Basin Water
Storage District—Federal
Disaster Grant

Dear Mr. Stivers:

This is in answer to your request for our opinion on the status of the Tulare Lake Basin Water Storage District as a "political subdivision" of the State of California. I have concluded that water storage districts are considered political subdivisions of the State.

The California Water Storage District Law includes a section titled "Nature of Districts Formed Under This Division." This is Water Code section 39060 which provides as follows:

> "The districts formed pursuant to this division are districts of the nature of irrigation, reclamation, or drainage districts in respect to all matters contemplated in the provisions of the constitution of the State of California relating to irrigation, reclamation, or drainage."

Thus the conclusions reached as to the nature of irrigation districts would also apply to water storage districts, and it is well settled that irrigation districts are considered political subdivisions and agencies of the State. See *Glenn-Colusa Irrigation District v. Ohrt*, 31 Cal.App.2d 619, 621 (1939) and cases cited therein.

The phrase "political subdivision" also appears in several other California codes. It is significant that these codes define the use of the phrase to specifically include districts such as a water storage district. See, e.g., Labor Code § 1721; Military & Veterans Code § 1260; Public Utilities Code § 1401.

Very truly yours,

THOMAS C. LYNCH
Attorney General
By /s/ Richard I. Gilbert
RICHARD I. GILBERT
Deputy Attorney General

RIG:dl

cc: James G. McCain, Esq.
Carlos S. Fowler, Esq.

Notice of Motion and Motion of Defendant to Dismiss.

Filed June 26, 1970.

[Caption omitted in printing]

TO PLAINTIFFS IN THE ABOVE-ENTITLED ACTION AND TO THEIR ATTORNEYS OF RECORD.

PLEASE TAKE NOTICE that on Monday, August 10, 1970, at 10:00 a.m. or as soon thereafter as counsel can be heard, defendant will move the above-entitled court in the Courtroom of the Honorable M. D. Crocker, United States Courthouse, Fresno, California, for an order dismissing the Complaint.

Said motion is made upon the ground that the Complaint fails to state a cause over which a court of the United States has jurisdiction and upon all grounds stated in defendant's Memorandum of Points and Authorities served and filed concurrently herewith. Said motion is based upon this Notice of Motion, upon defendant's said Memorandum of Points and Authorities, and upon all of the documents and records on file in the above-entitled action.

Dated: June 24, 1970.

DONNELLY, CLARK, CHASE & HAAKH
ERNEST M. CLARK, JR.
NEWELL & CHESTER
ROBERT M. NEWELL
By /s/ Ernest M. Clark, Jr.
Attorneys for Defendant

Memorandum and Order.

Original Filed: Nov. 13, 1970.

In the United States District Court, Eastern District of California.

Salyer Land Company, a California corporation, C. Everette Salyer; Fred Salyer; Lawrence Ellison; and Harold Shawl, Plaintiffs, vs. Tulare Lake Basin Water Storage District, a public district, Defendant. Civil No. F-414.

Defendant's motion to dismiss was submitted on briefs without argument; C. Ray Robinson and Thomas Keister Greer, appearing for plaintiffs; and Ernest M. Clark and Robert M. Newell, appearing for defendant.

'Plaintiffs' action is authorized by Section 1983 of Title 42 of U. S. Code, and alleges that plaintiffs are being denied constitutional rights under color of State law, particularly sections 41000 and 41001 of the Water Code of California which permits only landowners to vote, and give them one vote for each $100 worth of land.

Plaintiffs complaint presents a substantial constitutional question as to whether the sections of the California Water Code are in conflict with the United States Constitution.

Therefore, defendant's motion to dismiss is denied and a three-judge court is ordered convened pursuant to 28 U.S.C. § 2284.

DATED: November 13, 1970.

M. D. CROCKER
United States District Judge

Answer of Defendant, Tulare Lake Basin Water Storage District.

Filed December 14, 1970

[Caption omitted in printing]

Defendant, Tulare Lake Basin Water Storage District ("District"), for its answer to the Complaint herein alleges as follows:

1. Admits that plaintiffs purport to base the jurisdiction of this Court on the statutory provisions stated in paragraph I of the Complaint, but except as so admitted, denies each and every allegation in said paragraph contained.

2. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph II of the Complaint, except admits that plaintiff, Salyer Land Company, is a California corporation and that it owns and leases considerable acreage within the District which it farms.

3. Admits the allegations of paragraphs III, IV, V, VI, VII, VIII, IX, and XIII of the Complaint, and each of them, except denies knowledge or information sufficient to form a belief as to the truth of the following allegations: (1) that plaintiffs, C. Everette Salyer and Fred Salyer, are members of the Board of Directors of the District. In this connection, alleges that neither of said plaintiffs has attended any meeting of the Board, either a special meeting or a regular monthly meeting from and after March 4, 1969; and (2) that plaintiff, Lawrence Ellison, is a resident of the District or a registered voter. In this connection, alleges that defendant is informed and believes that plaintiff, Lawrence Ellison, is temporarily occupying a mobile home parked within the North Central Reclamation

District organized in 1924 under the Reclamation Law of the State of California which maintains the so-called North Central Levee which protects the lands of that District from flooding.

4. Denies the allegations contained in paragraph X of the Complaint, except admits that the J. G. Boswell Company is the largest landowner in the District and that, as a landowner, it has voted in elections held by the District pursuant to the California Water Storage District Law. Further admits that four of the eleven Directors of the District are employed by and receive compensation from J. G. Boswell Company. One additional Director of the eleven receives a nominal monthly consulting fee from the J. G. Boswell Company. Further admits that the President (one of the five Directors above mentioned), Vice President (one of the five Directors above mentioned) and Secretary of the District are stockholders of the J. G. Boswell Company and that the Secretary who is an attorney practicing law in Corcoran, California, is paid a small monthly retainer for his services.

5. Admits the allegations contained in paragraph XI of the Complaint, except denies knowledge or information sufficient to form a belief as to the precise number of separate landowners in each division of the District as of this date or the number of residents of the District. Admits that as of May 23, 1967, the number of landowners in each division was as alleged. In this connection, alleges that many landowners own parcels of approximately one acre each which are leased to large landowners and operators such as the Salyer Land Company, and many of these landowners have granted proxies to their lessees, permitting the lessees to vote for directors of their choice.

6. Denies each and every allegation contained in paragraphs XII, XIV, XV, XVI, XVII, XVIII, XIX, XX, and XXI, and each of them, except as hereinafter alleged:

The District encompasses approximately 193,000 acres in the Tulare Lake Basin, which is a closed depression, a sump with a bottom elevation of 175 feet and a top of about 195 feet. Water which flows down from the Sierra Nevada Mountains into the basin does not flow out. The principal tributaries bringing water to the basin are the Kings, Kaweah, Tule, and Kern Rivers. In some years the flow of water is large and a lake is formed in the basin. In other years the basin is relatively dry. At present, approximately 44,200 acres of some of the most productive land of the basin are under water and have been since the flood of 1969.

To control and distribute water, the landowners of the basin, either acting as individuals or through reclamation districts created under California law, have financed and constructed an intricate system of dikes and canals, and they have acquired water rights to provide water in dry years. Irrigation of the basin land is made possible by water derived from water rights held by the District, by water contracts executed by the District, by some landowners pumping from ground water, by some landowners' ownership of stock in mutual water companies holding water rights in Kings River, and by using any other water which flows into the basin and is capable of being controlled.

The water problems have in many years been controlled, resulting in successful crops. In other years, they have not. Because of the problems, the area is useful only for agriculture. It is essentially uninhab-

ited. The District provides no public services such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily operated and financed by a municipal body.

The District was formed by landowners in 1926 to assist them to farm the area. As required by law, the District was divided into eleven divisions so as to separate into separate divisions lands possessing the same general character of water rights or interests in the water of a common source (Water Code Section 39777). A director was elected by each division to represent that division (Water Code Section 39929). The franchise for the election of a director for each division is granted to landowners, resident and nonresident, corporate and individual, in proportion to the assessed value of land ownership (Water Code Section 41000 and Section 41001). No directors are elected at large to represent the District.

At the present time each of the eleven divisions is represented by a landowner or the representative of a landowner, and the terms of office for the following directors will terminate on the first Tuesday in March of 1971:

Cecil Howe	—	Division 2
Fred Salyer	—	Division 4
James B. Fisher	—	Division 6
E. E. Anderson, Jr.	—	Division 7
C. Everette Salyer	—	Division 11

The sizes of the eleven districts are today different. Division 4, represented by plaintiff, Fred Salyer, contains approximately fifty-two sections of land; and Division 10, represented by A. L. Vandergriff, a Vice

President of J. G. Boswell Company, contains approximately thirteen and one-half sections. Division 11, represented by plaintiff, C. Everette Salyer, contains approximately ten and three-quarter sections. The assessed valuations of these three divisions were, respectively, $2,047,620, $624,840, and $539,320.

The District is required to hold a general water storage district election on the first Tuesday in February of 1971 to choose a successor to each of the above named officers whose term expires (Water Code Section 41300). If by the fifty-ninth day prior to the election only one person has been nominated for the officer to be filled, or no one has been nominated, then the board may order that an election not be held for such office and request the Department of Water Resources to appoint such person as the Department shall select. (Water Code Section 41307).

The last election for directors for the divisions of the district was held on May 23, 1967, at which time eleven directors were selected, of which eight are still in office. Ed Howe, C. Everette Salyer, and James B. Fisher were subsequently appointed to fill vacancies by the Department of Water Resources upon the endorsement and recommendation of the Board then existing. At the election, Kings County Development Company, as a landowner and lessor to Salyer Land Company, cast its vote for Fred Salyer, a plaintiff in this action and a controlling shareholder of Salyer Land Company.

Since the formation of the District, it has never been redivisioned. Prior to July 1, 1965, the responsibility for any redivisioning rested with the Department of Public Works. On July 1, 1965, Section 41152 of the Water Code was amended to permit the Board to re-

division so that the divisions shall be as nearly equal to the number of holders of title to land entitled to vote in a general election as may be conveniently possible. On August 29, 1970, Section 41152 was repealed, and at this time there is no statutory provision concerned with redivisioning the District. No petition or application has ever been received by the Board seeking a redivisioning of the District.

The primary function of the officers of the District is to carry out the projects of the District which must be approved first by both a majority of landowners and landowners owning a majority of the assessed value of the entire District and then by the District Securities Commission of the State of California. The District has had only four projects in all of its history. Each of the District's projects dealt with water and related matters, including the storage, conservation and diversion of water, as to which the State of California has a compelling interest.

The first General District Project was approved by the voters of the District on December 6, 1927. This project contemplated the acquisition by the District of eighteen sections of land as a water storage reservoir, the return to the basin of waters flowing to the north in Kings River, levee and channel improvement, and the like. The estimated cost of the project was $1,608,-434.85. However, because of an adverse decision in the courts regarding the north flowing water and the depressed state of the economy, very little of this project was ever implemented.

General District Project No. 2 was approved by the voters on August 1, 1961. This project cancelled certain outmoded or uncompleted portions of Project No. 1. It also had as its purpose the establishment of rights

of the District to water in the Kings, Kaweah, Tule and Kern Rivers and participation in storage of water in the reservoirs on Pine Flat, Terminus, Success, and Isabella Rivers, respectively. The total cost of the project was estimated at $2,720,000.00.

General District Project No. 3 was approved by the voters on September 15, 1964. It was really a modification complete in itself of General District Project No. 2. Its purpose was the establishment of water rights in and the participation in reservoir storage at the four rivers referred to in the preceding paragraph. The cost of this project was estimated at $2,795,000.00.

General District Project No. 4 was approved by the voters on July 11, 1967. Its purpose was to fund the construction of two laterals from the California State Aqueduct to the basin for the purpose of transporting water purchased by the District from the State of California to the Tulare Lake Basin. This project also contemplated the construction of an office building for the district. The estimated cost of this project was $1,-800,000.00.

The two laterals have been constructed at a cost of approximately $2,500,000.00. The construction of the office building has been deferred.

The District, on behalf of its landowners, has filed petitions with the office of Emergency Planning pursuant to Sections 1855 ff. of Title 42 of the United States Code, and in response to such petitions the United States has granted certain moneys to the District. Further, the District has intervened in that certain action pending in this Court entitled *United States v. Tulare Lake Canal Company,* in which the United States seeks to impose acreage limitations on waters released from storage behind Pine Flat Dam.

FIRST AFFIRMATIVE DEFENSE

7. The Complaint fails to state a cause over which a court of the United States has jurisdiction.

SECOND AFFIRMATIVE DEFENSE

8. Neither Section 41000, nor Section 41001, nor any other section of the California Water Storage District Law is unconstitutional or otherwise contrary to the law of the United States. Therefore, any claim of plaintiffs, or any of them, should be asserted in the courts of the State of California.

THIRD AFFIRMATIVE DEFENSE

9. On March 27, 1969, plaintiff Salyer Land Company commenced an action in the Superior Court of Kings County, State of California, entitled *Salyer Land Company v. Robinson*, et al., being number 20056 in the files of said Court. Each of the defendants in said action is a director of the District, and the claim of the plaintiff in that action against said defendants is the same claim as asserted in the Complaint herein. Said action is still pending.

WHEREFORE, defendant prays that judgment be entered in its favor and against any claim of plaintiffs.

NEWELL & CHESTER
ROBERT M. NEWELL
DONNELLY, CLARK, CHASE & HAAKH
ERNEST M. CLARK, JR.
By /s/ Ernest M. Clark, Jr.
Ernest M. Clark, Jr.
Attorneys for Defendant.

[Affidavit of service omitted in printing]

Letter of Counsel to Clerk April 19, 1971.

Law Offices
THOMAS KEISTER GREER
Rocky Mount, Virginia 24151

The Clerk
United States District Court
Federal Building
1130 O Street
Fresno, California 93721

RE: *Salyer Land Company v. Tulare Lake Basin Water Storage District,* USDC No. No. F-414

Dear Sir:

28 U.S.C. Section 2284, dealing with procedure before three-judge courts, provides in part as follows:

> "(2) If the action involves the enforcement, operation or execution of State statutes or State administrative orders, at least five days notice of of the hearing shall be given to the governor and attorney general of the State."

The instant action involves the enforcement, operation and execution of State statutes, and notice of the trial now set for June 16, 17 and 18, 1971 should be given to the Governor and Attorney General of California.

I take it that you are the proper person to give this notice, from the later provision of Section 2284:

> "Such notice shall be given by registered mail or by certified mail by the clerk and shall be complete on the mailing thereof."

With kindest regards, I am

Sincerely,
Thomas Keister Greer

TKG/pf
cc: C. Ray Robinson, Esq.
Ernest M. Clark, Jr., Esq.
Robert M. Newell, Esq.

Letter of Clerk to Governor and Attorney General
April 20, 1971.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Office of the Clerk
U.S. Court House
Fresno, California 93721

Gov. Ronald Reagan
Capitol Building
Sacramento, Calif.

Attorney General
State of California
500 Wells Fargo Building
Fifth St. & Capitol Mall
Sacramento, Calif. 95814

Dear Sirs:

Re: F-414-Civ.
Salyer Land Co. vs. Tulare Lake Basin

Please be advised that the above-entitled action has been set for trial on June 16, 17 & 18, 1971 before a three-judge court.

You are being advised of this trial in compliance with 28 USC 2284 in which it is required that the Clerk shall give notice of such trial when State statutes are involved. Enclosed, for your information, is a copy of the memorandum and order of the Hon. M. D. Crocker in which the three-judge court has been ordered convened.

Yours truly,

D. D. BUTLER
Deputy Clerk

Letter From Court to Counsel May 10, 1971.

UNITED STATES DISTRICT COURT

Eastern District of California
Fresno, California 93721

Mr. C. Ray Robinson
Mr. Thomas K. Greer
Mr. Robert M. Newell
Mr. Ernest M. Clark

Gentlemen:

Re: Salyer Land Co. v. Tulare Lake Basin Water Storage District, No. F-414 Civ.

Judge Browning has asked me to explore the possibilities of submitting this case to the three-judge court on an agreed statement of facts. In view of the request for admissions recently filed, I would appreciate an attempt by all counsel to agree on the facts.

Please advise me of your progress.

Very truly yours,

/s/ M. D. Crocker
M. D. CROCKER

cc Honorable James R. Browning
Honorable Robert H. Schnacke

Letter From Counsel for Amicus Curiae to Court
May 28, 1971.

Law Offices of
DOWNEY, BRAND, SEYMOUR & ROHWER
1007 Seventh Street
Sacramento, California 95814
Telephone 441-0131

The Honorable M. D. Crocker
Judge of the U. S. District Court
U. S. District Courthouse
1130 O Street
Fresno, California

Re: Salyer Land Company, et al. vs. Tulare Lake Basin Water Storage District—No. F-414

Dear Judge Crocker:

As I told you on the telephone, we represent the California Central Valleys Flood Control Association, an association of reclamation districts in California. These districts all vote on the same basis as the defendant in this action, and accordingly the decision rendered herein will have drastic and far reaching effects upon all reclamation districts in California. Thus the Association hereby seeks the Court's permission to file an amicus Curiae brief in this action.

The Association has previously sought and obtained the consent of the parties to do so.

It is understood that the trial has been set for June 16, and if the Court's permission is obtained, the Association will have its brief filed as promptly thereafter as possible.

In the event the Court elects to permit us to file a brief herein, we enclose an Ex Parte Order for the Court's convenience.

Thank you very much for your attention.

Yours truly,

DOWNEY, BRAND, SEYMOUR & ROHWER

By

Joseph S. Genshlea

JSG:sc

Enclosure

cc: Donnelly, Clark, Chase & Haakh
Newell & Chester
C. Ray Robinson
Thomas Keister Greer

Letter From Counsel to Court June 4, 1971.

Law Offices
NEWELL & CHESTER
650 South Grand Avenue—Suite 500
Los Angeles, California 90017
629-1231 Area Code 213

Honorable M. D. Crocker
United States District Court,
Eastern District of California
Fresno, California 93721

Re: Salyer Land Co. v. Tulare Lake Basin Water Storage District—Civil No. F-414

Dear Judge Crocker:

In your letter of May 10, 1971 to all counsel you requested that we report on the progress made in attempting to agree on the facts in the captioned matter.

Mr. Clark and I have been conferring with Mr. Greer in the past few days toward reaching an agreement on the facts, reserving objections as to relevancy in accordance with your letter of June 1, 1971. I am pleased to report that we have made considerable progress in this regard.

Mr. Greer has delivered to the undersigned a draft statement of facts that the plaintiff proposes to place before the Court; in turn, we have given Mr. Greer a statement of facts that the defendant proposes to place before the Court. For the most part, we have been able to agree on all of the facts set forth in these statements.

Subject to the Court's approval, we suggest that each party file with the Court a statement of facts, reserving to the other side 48 hours within which to deny the accuracy of any specific fact. At the present time, we do not contemplate that there will be any denials of this type. These statements should be filed with the Court by Wednesday, June 9th, and any denials should be filed with the Court by Friday, June 11th.

It is also contemplated that we will have a joint schedule of exhibits, which schedule, together with the exhibits, will be delivered to Mr. Glover.

I have dictated this letter in the presence of Mr. Greer, with whom we have been meeting this past week.

Respectfully,

/s/ Robert M. Newell
Robert M. Newell

RMN:sr

cc: C. Ray Robinson, Esq.
Thomas Keister Greer, Esq.
Ernest M. Clark, Jr., Esq.

Letter From Court to Counsel June 7, 1971.

UNITED STATES DISTRICT COURT
Eastern District of California
Fresno, California 93721

Mr. Robert M. Newell
Attorney at Law
650 South Grand Ave. (Suite 500)
Los Angeles, California 90017

Dear Mr. Newell:

Re: Salyer Land Co. v. Tulare
Lake Basin Water Storage
District, No. F-414 Civ.

I agree with the procedure outlined in your letter of June 4, 1971.

Also, I wish to thank all counsel for cooperating with each other and the court.

Very truly yours,

M. D. CROCKER

cc C. Ray Robinson, Esq.
Thomas Keister Greer, Esq.
Ernest M. Clark, Jr., Esq.

Petition to Appear as Amicus Curiae.

Filed June 9, 1971

[Caption omitted in printing]

TO THE ABOVE ENTITLED COURT, THE PARTIES, AND THEIR ATTORNEYS OF RECORD:

DENSLOW GREEN, attorney at law, duly admitted to practice before the above entitled court, does petition the court to appear in the above entitled action on amicus curiae on behalf of the Irrigation Districts of the State of California, and in support thereof alleges as follows:

1. That the IRRIGATION DISTRICTS ASSOCIATION OF CALIFORNIA is a non-profit California corporation whose members consist of over 250 districts engaged in the distribution of water throughout the State of California.

2. That said Association and its member districts are vitally concerned with the voting procedures presently adopted by state statute which limit or restrict the right to vote in special districts in connection with land ownership.

3. That one of the principal issues in the above entitled action to be determined by this court involves land ownership, voting qualifications and the application of the "one man, one vote" rule.

4. That it is to the best interests of the Association that its views, representing the view of most of the districts involved in water distribution in the State of California, be presented to this court to assist the court in making its determinations on the issues above set forth.

WHEREFORE, the undersigned prays that he be allowed to appear as amicus curiae in the above entitled action and to file such briefs therein as may be allowed by the court.

Dated: June 8, 1971.

/s/ Denslow Green
DENSLOW GREEN

The above petition having been duly filed and good cause appearing therefor,

IT IS HEREBY ORDERED that DENSLOW GREEN and he is hereby authorized to appear in the above entitled action as amicus curiae on behalf of the IRRIGATION DISTRICTS ASSOCIATION OF CALIFORNIA.

Dated: June 9, 1971.

/s/ M. D. Crocker
M. D. CROCKER, Judge

PLAINTIFFS' STATEMENT OF FACTS.

Filed June 10, 1971.

Tulare Lake Basin Water Storage District, organized under the California Water Storage District Law in 1926, comprehends some 193,000 acres of land in Tulare Lake Basin, in Kings and Tulare Counties, California. Tulare Lake Basin is an intensively cultivated a very fertile farming area, the principal crops being cotton, barley and safflower.

The principal streams terminating in Tulare Lake Basin are the Kings, Tule, Kaweah and Kern Rivers. The United States has constructed dams on all four of these streams, Pine Flat on the Kings in 1954, Success on the Tule in 1961, Terminus on the Kaweah in 1961, and Isabella on the Kern in 1953. Because of these dams, in a "normal year" as defined by the engineer and hydrologists in the area, water does not flow into Tulare Lake. A "normal year" is defined as a "100 percent year" based upon engineering studies of stream flows throughout the years for which records are available. A year in which the runoff was half of normal would thus be referred to as a "50 percent year", and a year in which the runoff was twice normal would be referred to as a "200 per cent year". For example, 1971 is estimated to be a "65 percent year" on the Kings; there has been no flood inflow into Tulare Lake Basin in 1971. 1970 was a "79.5 percent year" on the Kings; there was no flood inflow into Tulare Lake Basin in 1970.

Since completion of the dams on the four major streams discharging into Tulare Lake, Pine Flat on the Kings, Success on the Tule, Terminus on the Kaweah, and Isabella on the Kern, there have been only two

years in which flood waters have entered Tulare Lake Basin. The first of these was the winter-spring of 1966-67, when a total of 169,752 acre feet of water entered Tulare Lake, which had been dry since 1959. The second of these was 1969, when the area experienced the greatest flood since 1906, and 1,169,900 acre feet of flood water entered Tulare Lake Basin. Water rose to the height of 192.5 U.S.G.S. datum, and approximately 88,000 acres of land out of the 193,000 acres in the district were flooded.

Evaporation and irrigation use have now reduced the flooded area to 27,000 acres. Approximately 300,000 acre feet of the water entering Tulare Lake Basin in 1969 was from the Kern River. This amount would have been reduced to approximately 100,000 acre feet had Buena Vista Lake been used for flood storage. Small floods such as those of 1967 are normally confined to the twelve sections spoken of as "the basin"; the aerial photograph dated May, 1967 [Ex. 1] shows water entering this twelve section area.

Tulare Lake Basin is divided into districts and areas by large levees, erected by various reclamation districts or by private landowners. The location of these levees is as shown on the map entitled "Tulare Lake Basin Topography" dated June, 1969 [Ex. 2]. A map showing the boundaries of the several reclamation districts in Tulare Lake Basin is Exhibit 3. The largest of these levees, the South Central Levee, the North Central Levee, the El Rico Levee, and the Consolidated Levee, have a height of approximately 196 feet U.S.G.S. datum, and they withstood the 1969 flood. In the 1969 flood the levee of Tulare Lake Reclamation District No. 749, which extends from the mouth of the Kings River along the north bank of the Tule river

for ten miles, was cut on February 25, 1969 to save the levee, and to provide for controlled rather than uncontrolled flooding of the lands protected by that levee. The Lovelace Levee failed on March 18, 1969.

The 1969 flood was the greatest runoff in the recorded history of the Kings, Kaweah, Tule and Kern Rivers. It was a 261.3 percent year on the Kings, a 356.9 percent year on the Kaweath, a 376 percent year on the Tule and a 451 percent year on the Kern. In 1969 water from the Kern River had not reached Tulare Lake Basin since 1952, which was prior to the completion of Isabella Dam on the Kern River. The location of Isabella reservoir and Buena Vista Lake are shown on the map "Kern River Service Areas" which is Exhibit 4.

The minutes of a meeting of the Board of Directors of Tulare Lake Basin Water Storage District held April 1, 1952, state in part as follows:

> "Consulting Engineer Harding, in respect of conditions on Kern River during the current season, discussed with the Directors the protection that might be had against floods from that stream by the full use of Buena Vista Lake reservoir. He said that he understood the landowners in that area were planning to store considerable water in Buena Vista Lake and not to use the Lake area, in 1952, for farming. He thought that Tulare Lake Basin Water Storage District should keep watch on what was done there, to see that Buena Vista Lake was fully used to store water from Kern River, because under normal, natural conditions on Kern River a great deal of flood water from that River would flow into Buena Vista Lake. Finally, Director Stone moved and Director Salyer seconded

the motion, and the motion carried unanimously for the adoption of a resolution as follows:

"RESOLUTION

"RESOLVED: That the Engineers of Tulare Lake Basin Water Storage District be and they are hereby instructed to keep a careful watch on flood flows in Kern River during the current season to see that Buena Vista Lake takes the full amount of water which properly should flow into it and there be stored and that, if such storage does not appear to be taking place, the President of the District be and he is hereby authorized to write a letter in the name of Tulare Lake Basin Water Storage District, to Buena Vista Water Storage District and the owners of land in Buena Vista Lake informing them that Tulare Lake Basin Water Storage District and the owners of land within it insist that such storage of flood flows of Kern River shall be made in Buena Vista Lake and that if they are not made the responsible parties will be held liable for any damages which may arise in Tulare Lake Basin by the discharge into such Basin of waters which should have been stored in Buena Vista Lake."

The "consulting engineer Harding" referred to in these minutes was S. T. Harding, late Professor of Engineering at the University of California, an authority on water matters in the San Joaquin Valley, and a consultant to the defendant District from the time of its formation.

On April 1, 1952 the Board of Directors included, among others, L. T. Robinson, Albert Armor, F. G. Sherrill and James G. McCain. Pursuant to the resolu-

on of April 1, 1952, Tulare Lake Basin Water Storage District gave Buena Vista Water Storage District and the owners of land in Buena Vista Lake written notice in accordance with the resolution above quoted, and the notices were acquiesced in by those receiving them. Buena Vista Lake, including Cell 3 thereof, was filled with the flood waters of the Kern River in 1952.

Tulare Lake Basin Water Storage District's letter of September 23, 1953 signed by Louis T. Robinson, its President, is Exhibit 5.

The J. G. Boswell Company began to farm Buena Vista Lake under a long term lease in 1956, and has farmed it ever since.

There was a meeting of the Board of Directors of the defendant district on March 4, 1969 with ten directors present, the eleventh director, the late Jack Gibson, being deceased.

At the meeting of March 4, 1969 Consolidated Reclamation District No. 812 presented the following resolution to the Board of Directors of Tulare Lake Basin Water Storage District:

> "WHEREAS, the Corps of Engineers manual for Isabella Project contains as its criteria for flood control operation, provision for the flood waters of Kern River to flow into Buena Vista Lake to the extent of its inlet capacity for Schedule III releases, and to the extent of said Buena Vista Lake's inlet capacity for Schedule IV releases; and
>
> WHEREAS, the said critiera for flood control operation provide that 'When there is a reasonable chance of having to make releases to Tulare Lake in the foreseeable future, adequate opportunity should be provided for filling Buena Vista Lake.',

NOW THEREFORE, BE IT RESOLVED, by the Board of Trustees of Consolidated Reclamation District No. 812, that this District calls upon the Board of Directors of Tulare Lake Basin Water Storage District to take action in the current flood emergency to protect the works and lands in Tulare Lake Basin from the flood waters of the Kern River, and to attempt by the requisite notices, and by legal action if necessary, to see to it that all of Buena Vista Lake be used to hold the flood waters of the Kern River to the full extent of that Lake's inlet capacity before such flood waters are turned north toward Tulare Lake.

BE IT FURTHER RESOLVED, that should the Board of Directors of Tulare Lake Basin Water Storage District fail or refuse to serve the requisite notices, and to file legal action if necessary, that each and every Director of Tulare Lake Basin Water Storage District be placed on notice that he owes a fiduciary obligation arising from the office held by such Director, and that Consolidated Reclamation District No. 812 will hold him personally and pecuniarily responsible for any and all damages sustained by this District as a result of such failure or refusal to act."

At the meeting of March 4, 1969 North Central Consolidated Reclamation District No. 2071 presented the following resolution to the Board of Directors of Tulare Lake Basin Water Storge District:

WHEREAS, the Corps of Engineers manual for Isabella Projects contains as its criteria for flood control operation provision for the flood waters of Kern River to flow into Buena Vista Lake to the extent of its inlet capacity for Schedule III re-

leases and to the extent of said Buena Vista Lake's inlet capacity for Schedule IV releases; and

WHEREAS, the said criteria for flood control operation provide that "When there is a reasonable chance of having to make releases to Tulare Lake in the foreseeable future, adequate opportunity should be provided for filling Buena Vista Lake."

NOW THEREFORE, BE IT RESOLVED, by the Board of Trustees of North Central Consolidated Reclamation District No. 2071, that this District calls upon the Board of Directors of Tulare Lake Basin Water Storage District to take action in the current flood emergency to protect the works and lands in Tulare Lake Basin from the flood waters of the Kern River, and to attempt by the requisite notices, and by legal action if necessary, to see to it that all of Buena Vista Lake be used to hold the flood waters of the Kern River to the full extent of that Lake's inlet capacity before such flood waters are turned north toward Tulare Lake.

BE IT FURTHER RESOLVED, that should the Board of Directors of Tulare Lake Basin Water Storage District fail or refuse to serve the requisite notices, and to file action if necessary, that each and every Director of said Tulare Lake Basin Water Storage District be placed on notice that he owes a fiduciary obligation arising from the office held by such Director, and that North Central Consolidated Reclamation District No. 2071 will hold him personally and pecuniarily responsible for any and all damages sustained by this District as a result of such failure or refusal to act.

At the meeting of March 4, 1969 Wilbur Reclamation District No. 825 presented the following resolution to the Board of Directors of Tulare Lake Basin Water Storage District:

WHEREAS, a flood emergency does now exist endangering the levees, works and lands of this District, and an intensification of the flood emergency is imminently threatened by the projected flows of flood waters from the Kern River; and

WHEREAS, this District, acting under authority of law and of its By-Laws, should take all feasible action to reduce or to eliminate the threatened flow of Kern River flood waters into the area of the Tulare Lake Basin Water Storage District wherein the levees, works and lands of this District are also located, and being now fully advised,

BE IT RESOLVED: That this District make immediate demand that the directors, officers, attorneys and all other appropriate officials of the said Tulare Lake Basin Water Storage District take all necessary steps (including but not limited to such action at law as may be necessary) to insure that said waters of the Kern River are ponded in Buena Vista Lake, to its full capacity, before any such flood waters be allowed to flow northward from Buena Vista Lake toward the Tulare Lake Basin; and

BE IT FURTHER RESOLVED: That the President and all other officers of the W. H. Wilbur Reclamation District No. 825, be, and they hereby are, authorized and directed to take such further actions as may be expedient or necessary,

in the opinion of the President and the said further officers of this District, to implement the intent and purposes of these Resolutions.

At the meeting of March 4, 1969 Director Everette Salyer moved the following resolution:

"WHEREAS, the Corps of Engineers' Criteria for Flood Control Operation of Isabella Project, as issued 17 March 1953 and revised 27 September 1954, provide for the flood flows of the Kern River to enter Buena Vista Lake to the extent of its inlet capacity for both Schedule III and Schedule IV releases, and further provide that 'When there is a reasonable chance of having to make releases to Tulare Lake in the foreseeable future, adequate opportunity should be provided for filling Buena Vista Lake';

NOW THEREFORE, BE IT RESOLVED:

1. That Tulare Lake Basin Water Storage District serve a demand on the owners and operators of Buena Vista Lake, and on Buena Vista Water Storage District, that the flood waters of the Kern River be introduced into Buena Vista Lake, including Cell 3, thereof, in accordance with the Corps of Engineers' Criteria for Flood-Control Operation of Isabella Project.

2. That Tulare Lake Basin Water Storage District forthwith employ counsel to seek injunctive relief against the owners and operators of Buena Vista Lake, and against Buena Vista Water Storage District, should said demand not be immediately complied with."

Director E. E. Anderson, Jr., who was an officer of South Lake Farms and of Producers Cotton Oil Company, seconded the motion.

Thereupon J. G. Boswell Company vice president Leonard L. Evers moved to table the resolution, and J. G. Boswell Company vice president A. L. Vandergriff seconded the motion.

With further reference to the meeting of March 4, 1969,

(a) A copy of the minutes of said meeting has been marked as Exhibit 6.

(b) Erling Kloster, Esq. appeared at that meeting representing J. G. Boswell Company.

(c) On page 15 of the minutes appears the following statement:

> "Attorney Kloster at this point made disclosures for the record as to the association of six of the directors with the J. G. Boswell Company indicating in some detail their stock ownership and employee affiliations. The six directors were Armor, Barnes, Evers, Fisher, Robinson and Vandergriff. He stated further that he had advised these directors they were not disqualified to vote with references to the Buena Vista matter."

The disclosures that Mr. Kloster made were as follows:

(i) That Louis T. Robinson, the Chairman of the Board was a former employee of the J. G. Boswell Company, a present shareholder and that he continue to participate in certain of the company's retirement benefits.

(ii) That Albert Armor was a former employee of the J. G. Boswell Company, that he had a personal family relationship with J. G. Boswell II, president of the company, and that he was "still an employee in the sense of being employed on a consulting basis at a rather minor monthly retainer."

(iii) That Stanley M. Barnes was a full time salaried employee of the J. G. Boswell Company, and a shareholder.

(iv) That A. L. Vandergriff was a vice president of the J. G. Boswell Company, and a stockholder.

(v) That Leonard L. Evers was a vice president of the J. G. Boswell Company, a director thereof, and a shareholder.

(vi) That James B. Fisher was an employee of the J. G. Boswell Company, and a shareholder.

The vote on the motion to table was 6-4, with each of the non-Boswell directors voting not to table, and with each of the directors as to whom disclosure was made of relationship with the J. G. Boswell Company voting to table. Cell 3 of Buena Vista Lake, the subject of the controversy, is approximately 70 percent of the land area of that lake, and approximately 85 percent of its storage capacity. No flood water entered Cell 3 in 1969.

Plaintiffs Everett and Fred Salyer objected to the six Boswell directors voting on the Buena Vista Lake issue, and took the position that they were disqualified to vote because of a conflict of interest. Said plaintiffs pointed out that when the same issue had arisen at an earlier time, on May 15, 1967, Fred G. Sherrill, a Boswell vice president, who was at the time a director

of Tulare Lake Basin Water Storage District, had written the following letter:

"May 10, 1967

"Mr. Louis T. Robinson
President
Tulare Lake Basin Water Storage District
1107 Norboe
Corcoran, California

Dear Louis,

As far as I can see at this time, circumstances make it impossible for me to attend the adjourned meeting on Monday, May 15 to consider the matter presented by Director Everette Salyer at the conclusion of the meeting on May 2nd.

I would like the record to show, however, that if present, I would have to disqualify myself from voting as a Director on this question.

Your very truly,

/s/ FRED G. SHERRILL
Fred G. Sherrill"

These plaintiffs also pointed out that the other members of the board of said Tulare Lake Basin Water Storage District who were direct Boswell employees, had disqualified themselves on May 15, 1967. One of said Boswell employees who so disqualified himself on the earlier date was Stanley M. Barnes.

Louis T. Robinson, president of Tulare Lake Basin Water Storage District since about 1945, came to California from Greensboro, Georgia, the original home of the late Colonel J. G. Boswell, founder of the J. G.

Boswell Company. From August, 1925 to August, 1951, Mr. Robinson was manager of the San Joaquin Valley for the J. G. Boswell Company. Until he retired in 1951 Mr. Robinson was a director of the J. G. Boswell Company. Since his retirement Mr. Robinson has received retirement income from the J. G. Boswell Company retirement fund and has from time to time acted as a consultant to the J. G. Boswell Company. He now represents the interest of the Boston Ranch Company, a subsidiary of the J. G. Boswell Company on the board of directors of Westlands Water District, and is a partner in Peterson Farms, in which the J. G. Boswell Company and others are partners. Mr. Robinson represents Division 5 of Tulare Lake Basin Water Storage District, and in connection therewith gave deposition testimony in the case of *Salyer Land Company v. Tulare Lake Basin Water Storage District* on July 20, 1967 as follows:

"Q. Mr. Robinson, you are familiar with the method by which directors are chosen in water storage districts, aren't you?

A. Yes, I am.

Q. And you are familiar with the method by which assessed valuation of land is the criterion by which the number of votes may be allocated?

A. Yes, I am.

Q. Now you are familiar I take it with the, or generally familiar at least, with the landholdings of the J. G. Boswell Company?

A. Yes.

Q. Does the J. G. Boswell Company hold enough land in Division 5 to in effect elect whomever they wish to that post?

A. In my opinion, they do."

Albert Armor is also from Greensboro, Georgia, and is a first cousin of J. G. Boswell II, the present president of the J. G. Boswell Company. Mr. Armor until his resignation at the April 6, 1971 meeting of the district, represented Division 8 thereof. In the course of the deposition above referred to Louis T. Robinson was asked the following question, to which he gave the following answer:

> "Q. Would it be correct to state that since the acquisition by the J. G. Boswell Company of Crocket and Gambogy—Mr. Reporter, C-r-o-c-k-e-t, G-a-m-b-o-g-y—that since acquisition of Crocket and Gambogy by the J. G. Boswell Company, that the Boswell Company has been in position to control Division 8?
>
> A. That would be my opinion."

On March 27, 1969 Salyer Land Company filed an action in the Superior Court of the State of California in and for the County of Kings to remove directors Robinson, Barnes, Evers, Armor, Fisher, and Vandergriff. An order was issued that the defendants show cause why they should not be removed, there were a number of hearings on demurrers and motions to strike, and the case has been under submission on demurrers since October, 1969. All the pleadings, briefs, and orders in that case have been collectively marked as Exhibit 7.

On October 4, 1965 Tulare Lake Basin Water Storage District filed a motion for leave to intervene in the case of *United States v. Tulare Lake Canal Company*, No. ND 1483, the litigation to determine applicability of the acreage restrictions of federal reclamation law to the lands in the Kings River service area. In its

papers for such intervention, Tulare Lake Basin Water Storage District stated in part as follows:

> "It would appear appropriate that Tulare Lake Basin Water Storage District, as the public agency most clearly concerned with the water rights of Tulare Lake Basin, be granted leave to intervene, in the nature of the right of parens patriae, to speak for and assert the interest of Tulare Lake Basin."

The motion for leave to intervene was granted by this Court by order dated January 27, 1966, and the district has participated in the litigation, which was recently tried, since that period.

In about the month of April 1967 counsel for Salyer Land Company inquired of James G. McCain, Esq. whether the District had ever been redivisioned in accordance with then section 41152 of the California Water Code. Mr. McCain replied as follows:

"May 4, 1967

T. Keister Greer, Esq.
Attorney at Law
c/o Salyer Land Company
P.O. Box 488
Corcoran, California 93212

Dear Tom:

In accordance with your request you are informed that Mr. Hadsell advises there has been redivision of the District in accordance with Section 41152.

Very truly yours,

/s/ Jim
James G. McCain

JGM/gh
cc: Dan Hadsell, Esq.
Attorney at Law
3130 Lewiston Avenue
Berkeley, California 94705"

At the time the late Mr. Hadsell was Secretary of the District and counsel for it.

Mr. Hadsell's deposition was taken by counsel for Salyer Land Company in the case of *Salyer Land Company, et al. v. Tulare Lake Basin Water Storage District,* the entire record in which case is being marked as Exhibit 8, on July 20, 1967. In the course of that deposition Mr. Hadsell was asked the following question and made the following reply:

> "Q. Can you tell us, Mr. Hadsell, why Tulare Lake Basin Water Storage District has not been at any time since the formation of the District redivisioned in accordance with the provisions of Section 41152 of the Water Code of the State of California?
>
> A. No."

The deposition of Louis T. Robinson, President of the defendant District was taken in the said case of *Salyer Land Company, et al. v. Tulare Lake Basin Water Storage District* on July 20, 1967. He was asked the following questions and made the following replies:

> "Q. Did you hear my question this morning to Mr. Hadsell directed to whether or not there had been a redivisioning of Tulare Lake Basin Water Storage District?

A. Yes, I did.

MR. LUCAS: Three and a half days during which Mr. Hadsell's deposition was taken.

MR. GREER: All right. Q. I am unable to state verbatim what Mr. Hadsell's reply was and so I won't attempt to, but I would like to ask you the same question: Has there been any redivision of Tulare Lake Basin Water Storage District to the best of your knowledge?

A. Not to the best of my knowledge.

Q. Has the subject been discussed in your presence?

MR. LUCAS: When?

MR. GREER: At any time.

MR. LUCAS: At any time up until today?

MR. GREER: Well, I am not going to ask him about talking to you about it, but let's say has it been discussed in your presence at any time prior to the filing of the present lawsuit?

A. I don't recall any discussion within the Board of Directors.

Q. Well, discussion within or without the Board of Directors?

A. I don't recall my specific discussion but I know of the fact that there had been no redivision, no redivision of the District.

Q. Do you recall my asking Mr. Hadsell this morning or directing his attention to the disparity in size between Division 4, and, for example, I think we said Division 10?

A. Yes, I did.

Q. Do you see that disparity in area yourself?

A. Yes, I do.

Q. Do you recall my asking Mr. Hadsell about the disparity in assessed valuation between Division 4 and certain of the other divisions?

A. Yes, I remember that.

Q. I draw your attention, for example, to the fact that the assessed valuation represented by Mr. Fred Salyer of something in excess of two million dollars is more than four times the assessed valuation, for example, of Division 7?

A. That's correct.

Q. Is that correct?

A. That's correct.

Q. And is considerably greater than the assessed valuation of any other division?

MR. LUCAS: That doesn't have any exhibit number, but let the record show you are directing the witness' attention to an exhibit.

MR. GREER: Yes, it has been marked for identification and I will get the one which has the number on it.

MR. FRED SALYER: No. 58.

MR. GREER: No. 58. The paper that the witness is using is a copy of the exhibit which I made available to you gentlemen this morning, is that correct?

MR. LUCAS: It appears to be, yes. I just don't have the exhibit. Where as the exhibits?

MR. GREER: Q. Mr. Robinson, let me have that one back and I will show you the one, the copy, which is marked with an exhibit number, being Plaintiff's 58, and I draw your attention again to the disparity in assessed valuation between Division 4 and the other divisions.

MR. LUCAS: Between Division 4 and all other divisions?

MR. GREER: Q. Well, let me put it to you this way, Mr. Robinson. What appears to be the assessed valuation of Division 1?

A. $774,420.

Q. What appears to be the assessed valuation in Division 2?

A. 850,622.

Q. What appears to be the assessed valuation of Division 3?

A. 955,750.

Q. What appears to be the assessed valuation of Division 5?

A. 2,047,620.

Q. No. I said Division 5, sir.

A. Five, sorry. 1,472,505.

Q. What appears to be the assessed valuation of Division 6?

A. 862,140.

Q. What appears to be the assessed valuation of Division 7?

A. 448,210.

Q. Of Division 8?

A. 697,490.

Q. Division 9?

A. 619,100.

Q. Of Division 10?

A. 624,840.

Q. Of Division 11?

A. 539,320.

Q. So it would be correct, Mr. Robinson, to say that Mr. Fred Salyer in representing Division

4, and what shows there as the assessed valuation of Division 4?

A. 2,047,620.

Q. —is representing more than twice as much the assessed valuation of Division 1, more than twice as much assessed valuation of Divisions 2, 3, 6, 7, 8, 9, 10 and 11, wouldn't it?

A. That's correct.

Q. The assessed valuation of your division appears to be $1,472,505?

A. That's correct.

Q. Can you tell us, Mr. Robinson, why it is that this disparity has been allowed to continue?

A. I cannot."

The last election held in Tulare Lake Basin Water Storage District was a special election called by Salyer Land Company and others. It was held May 23, 1967. The voting list prepared for that election is Exhibit 9. The location and size of the eleven divisions in Tulare Lake Basin Water Storage District are as shown on the map marked as Exhibit 10. Although that map is marked "Preliminary, Subject to Revision", it is adequate for the purpose of defining the division lines in the District.

The assessed valuation of the lands in these divisions at the time of the special election in 1967 were as stated in Louis T. Robinson's deposition testimony as above quoted. Some of these lands have been reassessed, and the assessed valuations of the lands in each division are today as follows:

DIVISION NO.	ASSESSED VALUATION
1	$1,039,705
2	1,358,550
3	974,530
4	1,954,547
5	1,342,417
6	869,160
7	917,250
8	767,675
9	797,040
10	688,425
11	620,990

Division 1 is today represented on the Board of Directors by Ed H. Howe, Division 2 by Ceil W. Howe, Division 3 by Leonard L. Evers, Division 4 by Fred Salyer, Division 5 by Louis T. Robinson, Division 6 by James B. Fisher, Division 7 by Edwin E. Anderson, Jr., and Division 8 was represented by Albert Armor until April 5, 1971, on which date Mr. Amor resigned. The Board has adopted a resolution on a successor but the Department of Water Resources has not as yet appointed such successor. Division 9 is represented by Stanley M. Barnes, Division 10 by A. L. Vandergriff, and Division 11 by C. Everett Salyer.

The pattern of farming operations in Tulare Lake Basin Water Storage District is as shown on the map marked as Exhibit 11. The pattern of farming in the District is also shown in the Schedule of Water Allocation to the several operators in the District, which Schedule is Exhibit 12. From this schedule it appears that the J. G. Boswell Company farms approximately 30.60 percent of the land in the District. Salyer Land

Company farms approximately 15.19 percent of the land in the District. South Lake Farms farms approximately 13.13 percent of the land in the District and Westlake Farms farms approximately 15.72 percent of the land therein. These four corporations alone farm almost 85 percent of the land in the District.

There has been no general water storage district election in Tulare Lake Basin Water Storage District since 1947. Other than the special election of May 23, 1967 there has been no election of directors at all since 1947.

Plaintiffs C. Everette Salyer and Fred Salyer are president and vice president of Salyer Land Company, are landowners in the District in their individual capacities, and are directors of Tulare Lake Basin Water Storage District. They declined to attend meetings of the Board of Directors of the District after the meeting of March 4, 1969 until March 2, 1971, upon the advice of counsel.

Lawrence Ellison is 62 and has been in the Tulare Lake area for forty years. He attended the University of Redlands, was for many years Superintendent of Crocket and Gambogy, a large farming operation in the District which was acquired in 1956 by the J. G. Boswell Company, and from 1956 to 1969 held a responsible position with the J. G. Boswell Company. He lost his position with the Boswell Company because of reductions occasioned by the 1969 flood, and worked during the 1969 flood as Levee Supervisor for Consolidated Reclamation District. He is a resident of the District, but is not a landowner, and cannot vote therein. He is a registered voter. Ellison takes an interest in water matters, is on the mailing list of several publications concerning water and water problems in

California, and he reads these publications. He would like to vote in District elections.

Plaintiff Harold Shawl is 61, a certified professional engineer, a graduate of the University of California and has had forty years experience in water matters in the Tulare Lake area. He owns a one-half interest in 65 acres of land in the District.

The budget of the District for 1970 was $481,000; in 1971 it was $405,000. The budgets for the District for 1970 and 1971 have been collectively marked as Exhibit 13.

The water rights of Tulare Lake Basin Water Storage District, for example, its water right in the Kings River as stated in the Kings River Schedule, and its water right derived from its contract with the state of California, are for the equal benefit of the lands in the District. That is to say, there are no gradations or priorities within the District as to District water.

On February 20, 1969 the Attorney General of California acting through Deputy Attorney General Richard I. Gilbert, wrote the letter which is Exhibit 14. The said letter, which concludes that water storage districts are publi. subdivisons of the State, was submitted by Tulare Lake Basin Water Storage District to the United States as part of an application by defendant for federal moneys, and $234,512.24 in federal funds was paid to defendant district pursuant to that application. The said application was for a federal disaster grant, for assistance in connection with damages occasioned by the 1969 flood.

On May 19, 1967, President Louis T. Robinson of Tulare Lake Basin Water Storage District was in San Francisco at a meeting of the California District Se-

curities Commission concerned with Project 4 of that District. In response to a suggestion that the Commission defer action until after the special election then scheduled for May 23, 1967 Mr. Robinson stated to the Commission as follows:

> "MR. ROBINSON: I know you shouldn't forecast elections and that causes me a little hesitancy to say what I am going to say.
>
> The eleven divisions in this large farming operation are completely controlled. You are going to have the same eleven directors on Tuesday that you have got today—with one exception. One of the directors is having some health trouble and he is going to be replaced; but other than that, they are going to be the same eleven directors."

* * *

> "MR. ROBINSON: Well, I have no concern about the election.
>
> But suddenly if a new board of directors were to come in, why then I would have nothing but opinion. But I have no concern about the election. The eleven divisions are controlled by people with enough votes to put back the same directors they have now—including the two Salyers that are dissenting at this time. They will be returned; the other nine will be returned."

The pictures of the homes in Tulare Lake Basin Water Storage District collectively marked as Exhibit 15 are genuine.

There are some small farmers in the District who lease the land they farm. One of these is Marion Harris, who leases the North half and the Southwest quarter of Section 17, Township 23 South, Range 23 East, M.D.B. & M. Mr. Harris, although a farming operator in the District, if not entitled to vote therein. Another farmer who leases but does not own the land cultivated by him is Ronnie Harris, who farms the North half of Section 20, Township 23 South, Range 23 East, M.D.B. & M. Ronnie Harris is not permitted to vote in District elections. Malcolm Powers leases the North half of Section 3, Township 23 South, Range 19 East, M.D.B. & M. He also is not entitled to vote in District elections.

The following persons live in Tulare Lake Basin Water Storage District:

RESIDENTS WITHIN BOUNDARIES OF
TULARE LAKE BASIN WATER STORAGE DISTRICT

Section 1-21-19

Mr. and Mrs. Theodore F. Dragoo	2
Mr. and Mrs. Ruperto H. Escalera and three children	5
Mr. and Mrs. Thomas J. Parrish	2
Mr. and Mrs. Kenneth G. Rider and two children	4
Mr. and Mrs. Tony O. Jiminez and two children	4
Mr. and Mrs. Martin L. Dunham	2
Mr. and Mrs. William E. Spangler	2
Mr. and Mrs. Perry Hixon	2
Mr. and Mrs. M. S. Spencer and one child	3
Mr. and Mrs. Martin Molina and two children	4

Section 1-21-19 (continued)

Mr. and Mrs. Richard W. Koontz and one child	3
Mr. and Mrs. Donald M. Langdon	2
Mr. and Mrs. John P. Warren and two children	4
	39

Section 7-22-19

Mr. and Mrs. W. W. Davin	2
Mr. and Mrs. H. W. Bentley and two children	4
	6

Section 11-21-19

Mr. and Mrs. Cecil W. Howe	2
Mr. and Mrs. Cecil W. Howe, Jr. and one child	3
Mr. and Mrs. Ed H. Howe and two children	4
Mr. M. O. Reed	1
	10

South Ranch Headquarters

Star Route, Box 11, Stratford, California 93266

Mr. Lupe Martinez	1
Mr. Alex Jimenez	1
Mr. Luiz Rameriz	1
Mr. Jesus Hildago	1
Mr. Jose Medina	1
Mr. Jorge Salazar	1
Mr. Salvidor Avila	1
Mr. Noe C. Sotela	1
Mr. Cresencio Hara Resa	1
Mr. Jose E. Quinones	1
Mr. Bob Gibson, Jr.	1
Mr. Ruben Avilia	1
	12

Section 1-22-21

Mr. and Mrs. Chris LeMay	2
	2

Section 13-23-21	
Mr. and Mrs. Wayne Pendola	2
Mr. and Mrs. Ted A. Brien	2
	4
Section 9-23-20	
Mr. and Mrs. Dale Frey	2
Mr. and Mrs. Hamil Saylor	2
	4
Section 19-21-20	
Mr. Lawrence Ellison	1
	1
TOTAL RESIDENTS WITHIN BOUNDARIES	78

None of these persons are permitted to vote in Tulare Lake Basin Water Storage District elections, except for the Howes through their ownership of Westlake Farms.

Plaintiffs' List of Exhibits:

Filed June 10, 1971

Exhibit No. 1—Aerial photograph of Tulare Lake Basin dated May, 1967.

Exhibit No. 2—Map entitled "Tulare Lake Basin Topography" prepared by Joseph B. Summers.

Exhibit No. 3—Map entitled "Tulare Lake Basin Topography" prepared by Roy L. May, showing boundaries of reclamation districts.

Exhibit No. 4—Map entitled "Kern River Service Areas", showing the location of Cells 1, 2 and 3 of Buena Vista Lake.

Exhibit No. 5—Tulare Lake Basin Water Storage District letter of September 23, 1953, signed by Louis T. Robinson.

Exhibit No. 6—Minutes of meeting of Board of Directors of Tulare Lake Basin Water Storage District held March 4, 1969.

Exhibit No. 7—Entire record in *Salyer Land Company v. Louis T. Robinson, et al.* filed March 27, 1969.

Exhibit No 8—Complaint, stipulation and judgment in case of *Salyer Land Company, et al. vs. Tulare Lake Basin Water Storage District,* 1967.

Exhibit No. 9—Voting list of special election May 23, 1967, Tulare Lake Basin Water Storage District.

Exhibit No. 10—Division map of Tulare Lake Basin Water Storage District, showing assessed valuation of each division, and the director representing each division.

Exhibit No. 11—Farmer Operation map, Tulare Lake Basin Water Storage District.

Exhibit No. 12—1961 schedule of water allocation, Tulare Lake Basin Water Storage District.

Exhibit No. 13—Budgets of Tulare Lake Basin Water Storage District for 1970 and 1971.

Exhibit No. 14—Letter from office of the Attorney General, State of California, dated February 20, 1969.

Exhibit No. 15—Eighteen photographs of residences in Tulare Lake Basin Water Storage District.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

PLAINTIFFS' EXHIBIT 12.

SCHEDULE OF WATER ALLOCATION TO WATER USERS OF TULARE LAKE BASIN WATER STORAGE DISTRICT 1971

Operator	Allocated Acreage	Percent
J. G. Boswell Co.	76,501.43	40.638
Boyett Farming Co.	320.00	0.170
John Dunlop Farms, Inc.	704.32	0.374
Gilkey Farms, Inc.	1,178.83	0.626
Harp & Hansen	1,849.59	0.983
Kern River Delta Farms	3,183.11	1.691
J. B. Long	1,539.29	0.818
Newton Bros.	2,823.66	1.500
Peterson Farms	1,827.76	0.971
R. A. Rowan & Co.	2,958.95	1.572
Salyer Land Co.	28,606.14	15.196
San Joaquin Cotton Oil Co.	560.00	0.297
Schwartz Farms	3,815.20	2.026
South Lake Farms	24,721.41	13.132
Squire, F. Ronald	333.00	.177
Westlake Farms	29,604.42	15.726
Misc.—Kings County	4,795.11	2.547
Misc.—Tulare County	2,930.56	1.556
Total	188,252.78	100.000

PLAINTIFF'S EXHIBIT 12.

SCHEDULE OF WATER ALLOCATION TO
WATER USERS OF TULARE LAKE
BASIN WATER STORAGE DISTRICT
1971

	Allocation Acres	Percent
[illegible]	76,591.43	40.032
[illegible]	320.00	0.170
[illegible]	704.22	0.374
[illegible]	1,175.43	0.624
[illegible]	3,429.55	0.821
[illegible]	3,183.11	1.691
[illegible]	1,539.29	0.818
[illegible]	2,822.60	1.500
[illegible]	1,277.76	0.677
[illegible]	2,952.95	1.572
[illegible]	28,500.14	15.146
[illegible]	560.00	0.297
[illegible]	3,815.20	2.028
[illegible]	24,711.41	13.131
[illegible]	333.00	.177
[illegible]	29,804.47	15.726
[illegible]	4,943.11	2.627
[illegible]	2,930.59	1.558
Total	188,272.76	100.000

DEFENDANT'S STATEMENT OF FACTS:

Filed June 10, 1971

The Tulare Lake Basin Water Storage District was formed on September 19, 1926 in accordance with the California Water Storage District Act of 1921, approved June 3, 1921. Statutes of California for 1921 at page 1727. (For the convenience of the Court, copies of certain relevant sections of the California Water Storage District Act of 1921 are submitted herewith.)

In accordance with the mandate of that act, the State Engineer of the State of California divided the District into eleven divisions, having segregated ". . . into separate divisions lands possessing the same general character of water rights or interests in and to the waters of such common source . . ." Attached hereto as Exhibit A is a map of the District showing the eleven divisions. This original determination by the State Engineer of the boundaries of the eleven divisions has remained unchanged since the formation of the District. There has never been filed with the Department of Public Works or, since 1965, with the Board of Directors of the District any petition or request that the boundary lines of the divisions within the District be recast.

The Board of Directors of the District is composed of one director for each division.

Under California law, a Water Storage District undertakes what are known as "District Projects" (California Water Code, sections 42200 ff.). The Tulare Lake Basin Water Storage District has had four District Projects since its formation:

General District Project No. 1.

On July 12, 1927, the Board of Directors of the District approved a "Report and Estimate of Cost of

Proposed Improvements of Tulare Lake Basin Water Storage District," a copy of which is submitted herewith as Exhibit B. On July 22, 1927, this report was filed with the Office of the State Engineer who approved the report and called for an election to be held to approve or disapprove said report. An election was duly held on December 6, 1927, at which time the Report and Estimate was duly adopted as General District Project No. 1.

General District Project No. 1 contemplated the purchase by the District of eighteen (18) sections of land in the lowest part of the Basin to be used as a water storage reservoir, the construction of certain facilities in the main channel of the Kings River to divert water from the North Fork of that river to the South Fork and for the construction of certain channel improvements. The estimated cost of the General District Project No. 1 was $1,608,434.85.

After the aforementioned election adopting the General Project No. 1, proceedings were held in accordance with Section 19 of the California Water Storage District Act for the levy of assessments upon the lands of the District. The State Engineer appointed three commissioners who, after duly conducted hearings, assessed the costs of the project in proportion to the benefits that they determined would accrue to the various lands in the District. The Assessment Commissioners prepared an Assessment Roll and reported to the State Engineer. See Exhibit C submitted herewith. This assessment became effective on August 3, 1929 and remained in full force and effect until 1961, when General District Project No. 2 was adopted.

From time to time, various portions of General Project No. 1 were carried out in whole or in part.

Some twenty (20) calls for payment were made under this assessment, totaling approximately 47.13 per cent of this assessment.

However, because of an adverse decision in the courts of the State of California, the District was prevented from diverting the flow of the Kings River to the South Fork, and because of the depressed state of the economy in the 1930's and a long cycle of dry weather when there was no water available for storage, the District abandoned its plan to purchase the eighteen sections in the Basin. They reverted to private ownership.

General District Project No. 2.

Under the provisions of the Flood Control Act of 1944, the Corps of Engineers of the United States Army was authorized to construct flood control dams and reservoirs on the Kings, Kaweah, Tule and Kern Rivers. These projects were scheduled for completion at various dates beginning in the early 1950's. By 1960, it was the desire of the Tulare Lake Basin Water Storage District to acquire storage space in each of these reservoirs by appropriate agreements with the United States. Therefore, the District undertook General District Project No. 2. The Report and Estimate of Cost of General District Project No. 2 dated March 2, 1961 is submitted herewith as Exhibit D. The following procedural steps were undertaken to implement General District Project No. 2:

1. On March 2, 1961, the Board of Directors of the District approved and adopted the Report and Estimate of Cost which estimated the total cost of General District Project No. 2 at $2,720,000.

2. On April 5, 1961, the Report and Estimate of Cost was filed with the California State Department of Water Resources.

3. On June 26, 1961, after an investigation, the Department of Water Resources approved and confirmed the aforementioned report and issued an order calling an election to determine whether the report should be adopted by the District.

4. On August 1, 1961, an election was held in the District on the question of whether District Project No. 2 should be completed.

5. On August 16, 1961, the Department of Water Resources issued its order declaring the results of the aforementioned election.

The canvass of votes indicated that under Official Ballot A there were 66,313 votes in favor of the project and none opposed. Under Official Ballot B, the total number of votes cast at the election was 50 for completion of the project and none opposed.

6. On August 29, 1961, the District filed an action in the State courts to determine the validity of the adoption of the project.

7. On October 20, 1961, the court rendered a judgment declaring that the adoption of General District Project No. 2 was valid.

8. On July 30, 1962, an assessment in the amount of $2,720,000 became duly established.

A copy of the complaint in the validation proceedings, including the exhibits attached thereto as well as the Findings of Fact, Conclusions of Law and Judgment, is attached hereto as Exhibit E.

General District Project No. 3.

As a result of an opinion by Frank J. Barry, Solicitor of the Department of Interior, the anticipated contractual arrangements which the District expected to enter into with the United States were substantially changed. Nonetheless, it was the judgment of the Board of Directors of the District that the interest of the District would be served by participating in a series of contracts acquiring storage space on the four floor control dams mentioned in General District Project No. 2. It was estimated that the total cost of General District Project No. 3 would be $2,795,000. (No part of the prior assessment of $2,720,000 had been called for payment.) A copy of the Report and Estimate of Cost on General District Project No. 3 is attached hereto as Exhibit F.

The following steps were taken to implement General District Project No. 3:

1. On April 13, 1964, the Board of Directors of the District approved and adopted the Report and Estimate of Cost.

2. On May 12, 1964 the Report and Estimate of Cost was filed with the Department of Water Resources of the State of California.

3. On August 18, 1964, after a report and investigation, the Department of Water Resources made its order approving and confirming the Report and recommendations of the Board and on the same day issued an order calling for an election in the District to determine whether such Report and Estimate of Cost should be adopted by the District.

4. On September 15, 1964, an election was duly held as required by law on the question of whether the Project should be completed.

5. On September 29, 1964, the Department of Water Resources issued its order declaring the results of the election. (The canvass of the votes revealed that under Official Ballot A 59,216 votes were cast in favor of the Project; none was opposed to it. Under Official Ballot B, the total number of votes cast at the election was 45, all in favor of the Project, none opposed.)

6. On November 12, 1964, the District filed an action in the State court to determine the validity of General District Project No. 3.

7. On March 11, 1965, the court rendered a judgment declaring valid the adoption by the District of General District Project No. 3.

A copy of the complaint filed in the validation proceedings together with the exhibits attached thereto and the Findings of Fact, Conclusions of Law and the Judgment in that action are submitted herewith as Exhibit G.

Additional Project No. 1.

By 1963, the construction of the California State Aqueduct, which would bring water from Northern California along the west side of the San Joaquin Valley, was sufficiently assured that the State of California was willing to contract with appropriate agencies for the sale of such water. The District wished to contract with the State for the purchase of a substantial amount of this water for irrigation use on the lands of the District. The Report and Estimate on Additional Project No. 1 was favorably passed upon by the Board of

Directors on November 18, 1963, approved by the Department of Water Resources on November 20, 1963 and approved by the voters of the District on December 17, 1963. A copy of the Report and Estimate of Cost is submitted herewith as Exhibit H.

Subsequently, it was determined that the District could contract for additional water from the State. Accordingly, the District undertook to enter into a modified agreement with the State by means of Modification to Additional Project No. 1. The following steps were taken to empower the District to contract with the State for the purchase of water:

1. On August 4, 1964, the Board of Directors of the District approved and adopted a Report and Estimate of Cost of Modification of Additional Project No. 1.

2. On August 5, 1964, the Report was filed with the Department of Water Resources of the State of California.

3. On August 18, 1964, the Department of Water Resources made and entered its order approving the Report and made another order calling for an election in the District to determine whether such Report and Estimate should be adopted by the District.

4. On September 15, 1964, an election was duly held on the question of whether the Modification to Additional Project No. 1 should be adopted.

5. On September 21, 1964, the Department of Water Resources issued its order declaring the results of the election. (The canvass of the votes

revealed that under Official Ballot A 59,326 votes were cast in favor of the Project; none was opposed. Under Official Ballot B, 45 votes were cast in favor of the Project; none was opposed.)

6. On November 12, 1964, the District filed an action to determine the validity of the Report and Estimate on the Modification of Additional Project No. 1.

7. On March 11, 1965, the Court rendered a judgment declaring valid the adoption of the Modification of Additional Project No. 1.

A copy of the complaint filed in the validation proceedings together with exhibits attached thereto and the Findings of Fact and Conclusions of Law and Judgment are submitted herewith as Exhibit I.

General District Project No. 4.

Having contracted with the State of California for the purchase of water, it was necessary to transport this water from the State Aqueduct to the District. Therefore, it was the unanimous judgment of the Directors of the District that it would be in the best interests of the landowners in the District to construct two laterals from the State Aqueduct to the District by which to transport the water to the District. It was also deemed advisable that the District construct an office building. It was estimated that the total cost for Project No. 4 would be $1,800,000. (In fact, the two laterals have been constructed by the District at a cost of approximately $2,500,000.)

The following steps were taken to implement Project No. 4:

1. On July 5, 1966, the Board of Directors of the District unanimously approved and adopted the Report and Estimate of Cost of General District Project No. 4, a copy of which is submitted herewith as Exhibit J.

2. On December 19, 1966, the Report was filed with the District's Securities Commission.

3. On May 19, 1967, the District's Securities Commission issued its order approving General District Project No. 4 and thereafter, in accordance with Section No. 42525 of the California Water Code, the Board of Directors called an election to be held in the District to determine whether the voters approved Project No. 4.

4. On July 11, 1967, an election was held by the District in accordance with the aforementioned procedure.

5. On July 24, 1967, the Board of Directors canvassed the results of the election and reported that under Official Ballot A there were 79,523 votes in favor of the completion of District Project No. 4 and 13,923 votes opposed. Under official Ballot B, the number of ballots cast was 207 votes in favor of the Project; 63, opposed.

6. On May 18, 1967, the Salyer Land Company filed an action in the State courts challenging the validity of District Project No. 4.

7. On September ....., 1967, an order was entered by stipulation decreeing that Project No. 4 had been validly adopted by the District. A copy of the complaint, stipulation and judgment are submitted herewith as Exhibit K.

Assessment Commissioners were appointed in accordance with California Water Code section 46150, who prepared an Assessment Roll and filed their report with the District Securities Commission. A copy of their report is submitted herewith as Exhibit L and a copy of the Assessment Roll, as Exhibit M.

The last election of directors was held May 23, 1967. There was no election in 1969. The District called an election to be held February 2, 1971. Petitions were circulated in three divisions on behalf of the incumbent directors. There were no petitions on behalf of others. Therefore, the three directors were reappointed to succeed themselves in accordance with California Water Code section 41307. No petitions were circulated in Divisions 4 and 11, represented by Fred Salyer and C. Everette Salyer, respectively. These directors were reappointed at their request by the Department of Water Resources of the State of California.

The Tulare Lake Basin Water Storage District encompasses approximately 193,000 acres, most of which is located in the Tulare Lake Basin. Tulare Lake Basin in turn is a shallow depression of about 270,000 acres in area located west of Corcoran, California. A map of the Basin showing the boundaries of the District is submitted herewith as Exhibit N.

The Basin is subject to flooding from time to time, principally from the flows of the Kings, Kaweah, Tule or Kern Rivers or combinations thereof. For example, in 1969 one of the largest floods in history inundated portions of the Basin, flooding over 88,000 acres of rich farmland. A photograph of the Basin showing the flooded area on October 5, 1969 is submitted herewith

as Exhibit O. At the peak of the flood, 100 per cent of divisions 3, 5 and 6, 56 per cent of division 4 and 28 per cent of division 7 were under water.

Because of the recurrent floods, very few people live in the District. At the present time, there are 77 men, women and children living in the District. Many of the families are permanent or semi-permanent employees of Westlake Farms, Inc., which owns approximately 15,000 acres of land on the west side of the Basin. For example, 38 people reside at that company's Nevada Avenue Labor Camp; 6, at its Kettleman City Labor Camp; 10, at its headquarters complex; and 12, at its South Ranch headquarters, making a total of 66 people affiliated with Westlake Farms, Inc. living in the District. In addition, 2 people live at the El Rico headquarters of the J. G. Boswell Company and 4, at that company's Homeland headquarters. Four people live at the Southlake Farms headquarters, and Lawrence Ellison one of the plaintiffs in this action, lives in a home owned by plaintiff Salyer Land Company at its North Central headquarters. A map showing the location of each of these locations, except Westlake Farms South Lake headquarters, is submitted herewith as Exhibit P.

Among these people, only the members of the Howe families, who are the owners of Westlake Farms, a corporation, own land in the District.

There are 307 landowners in the District. The pattern of land ownership varies greatly in different portions of the District. For example, in the lower portions of the land is held, for the most part, in sizable ownerships. However, in the southeastern quadrant, in an area sometimes referred to as the Homeland District,

there are many small ownerships. This pattern is due to the fact that some years ago there was some speculation in oil drilling in the area and small ownerships were sold by the promoters of this venture. These small holdings are all leased for farming to larger operators, who usually vote these smaller holdings by proxy. A schedule showing the relative number of land holdings is submitted herewith as Exhibit Q.

The District provides no public services, such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed and operated by a municipal body. There are no towns, shops, hospitals, fire departments, police, buses, trains or other facilities of a type designed to improve the quality of life within the boundaries of a governmental entity.

The thrust of the complaint deals with the landowner qualifications for voting as set forth in California Water Code section 41000. By virtue of this section, only holders of title to land may vote at a general election. Members of the Board of Directors are elected at a general election. However, the Board actually exercises very little governmental power. Apart from housekeeping chores, the principal activities of the District are carried out through the medium of District Projects.

Where District Projects are concerned, the election procedures are different than those at a general election. This is the election at which the voters determine whether they will subject their lands to the estimated cost of the project. For these elections, California Water Code section 42550 requires that to adopt the report there must be a majority of all votes cast *and* a majority of the qualified voters who voted at the election.

This means, then, that each landowner is provided with two ballots, one entitling him to cast as many votes as the assessed valuation of his land computed in units of $100 of assessed valuation determines. This ballot has been referred to as Official Ballot A. In addition, as a landowner, however large or small his holdings, he is entitled to cast one vote under Official Ballot B. Copies of Official Ballot A and Official Ballot B are submitted herewith as Exhibits R and S respectively.

The net effect of this Code section is that a simple majority of the landowners in the Tulare Lake Basin can defeat any District Project. Therefore, the 189 landowners, who own 80 acres or less of land in the District, representing but 2.34 per cent of the acreage in the District, have the electoral power to defeat any District Project.

Defendant's List of Exhibits.

Filed June 10, 1971.

EXHIBIT A—Map of the Tulare Lake Basin Water Storage District

EXHIBIT B—Report and Estimate of Cost on Proposed Improvements of Tulare Lake Basin Water Storage District dated July 12, 1927

EXHIBIT C—Assessment Commissioners' report

EXHIBIT D—Report and Estimate of Cost on General District Project No. 2 dated March 2, 1971

EXHIBIT E—Complaint, Findings of Fact, Conclusions of Law and Judgment in validation proceedings regarding General District Project No. 2

EXHIBIT F—Report and Estimate of Cost on General District Project No. 3

EXHIBIT G—Complaint, Findings of Fact, Conclusions of Law and Judgment in validation proceedings regarding General District Project No. 3

EXHIBIT H—Report and Estimate of Cost on Additional Project No. 1

EXHIBIT I—Complaint, Findings of Fact, Conclusions of Law and Judgment in validation proceedings regarding Modification of Additional Project No. 1

EXHIBIT J—Report and Estimate of Cost on General District Project No. 4

EXHIBIT K—Complaint, stipulation and judgment regarding validity of General District Project No. 4

EXHIBIT L—Assessment Commissioners' report regarding General District Project No. 4

EXHIBIT M—Assessment Roll regarding General District Project No. 4

EXHIBIT N—Map of the Tulare Lake Basin Water Shortage District

EXHIBIT O—Photograph of Tulare Lake Basin on October 5, 1969

EXHIBIT P—Map showing various residence locations in the District

EXHIBIT Q—Schedule showing the relative number of land holdings in the District

EXHIBIT R—Copy of Official Ballot A

EXHIBIT S—Copy of Official Ballot B

DEFENDANT'S EXHIBIT P.

RESIDENTS WITHIN BOUNDARIES OF TULARE LAKE BASIN WATER STORAGE DISTRICT

Section 1-21-19

Mr. and Mrs. Theodore F. Dragoo	2
Mr. and Mrs. Ruperto H. Escalera and three children	5
Mr. and Mrs. Thomas J. Parrish	2
Mr. and Mrs. Kenneth G. Rider and two children	4
Mr. and Mrs. Tony O. Jiminez and two children	4
Mr. and Mrs. Martin L. Dunham	2
Mr. and Mrs. William E. Spangler	2
Mr. and Mrs. Perry Hixon	2
Mr. and Mrs. M. S. Spencer and one child	3
Mr. and Mrs. Martin Molina and two children	4
Mr. and Mrs. Richard W. Koontz	2
Mr. and Mrs. Donald M. Langdon	2
Mr. and Mrs. John P. Warren and two children	4
	38

Section 7-22-19

Mr. and Mrs. W. W. Davin	2
Mr. and Mrs. H. W. Bentley and two children	4
	6

Section 11-21-19

Mr. and Mrs. Ceil W. Howe	2
Mr. and Mrs. Ceil W. Howe, Jr. and one child	3
Mr. and Mrs. Ed H. Howe and two children	4
Mr. M. O. Reed	1
	10

RESIDENTS WITHIN BOUNDARIES OF TULARE LAKE BASIN WATER STORAGE DISTRICT

PAGE TWO

South Ranch Headquarters
Star Route, Box 11, Stratford, California 93266

Mr. Lupe Martinez	1
Mr. Alex Jimenez	1
Mr. Luis Rameriz	1
Mr. Jesus Hidalgo	1
Mr. Jose Medina	1
Mr. Jorge Salazar	1
Mr. Salvidor Avila	1
Mr. Noe C. Sotela	1
Mr. Cresencio Hara Resa	1
Mr. Jose E. Quinones	1
Mr. Bob Gibson, Jr.	1
Mr. Ruben Avila	1
	12

Section 1-22-21

Mr. and Mrs. Chris LeMay	2
	2

Section 13-23-21

Mr. and Mrs. Wayne Pendola	2
Mr. and Mrs. Ted A. Brien	2
	4

Section 9-23-22

Mr. and Mrs. Dale Frey	2
Mr. and Mrs. Hamil Saylor	2
	4

Section 19-21-20

Mr. Lawrence Ellison	1
	1

TOTAL RESIDENTS WITHIN BOUNDARIES 77

DEFENDANT'S EXHIBIT Q.

SUMMARY

LAND OWNERSHIP IN THE TULARE LAKE BASIN WATER STORAGE DISTRICT

	Number of Acres	Number of Ownerships	Number of Acres	Percent of Total Acreage	Cumulative Percent of Total Acreage
Ownerships greater than	25,001	1	61,666	32.76	
Ownerships between	10,001 and 25,000	4	62,031	32.95	65.71
" "	5,001 and 10,000	1	5,122	2.72	68.43
" "	2,561 and 5,000	2	6,462	3.43	71.86
" "	1,281 and 2,560	6	10,294	5.47	77.33
" "	641 and 1,280	12	10,453	5.55	82.88
" "	321 and 640	29	15,255	8.10	90.98
" "	161 and 320	33	8,539	4.54	95.52
" "	81 and 160	30	4,034	2.14	97.66
" "	41 and 80	33	2,334	1.24	98.90
" "	21 and 40	37	1,353	.72	99.62
" "	0 and 20	119	710	.38	100.00
		307	188,253	100.00	

DEFENDANT'S EXHIBIT R.

"BE IT FURTHER RESOLVED that for the purpose of said election, one election precinct, designated Election Precinct No. 1, is hereby established in said District, the boundaries of which shall be the same as the boundaries of said District; and

"BE IT FURTHER RESOLVED that the voting place in said Election Precinct No. 1 is hereby designated and the persons to act as a board of election at said voting place are hereby appointed as follows:

Voting Place:
El Rico Ranch Office of J. G. Boswell Company,
located in the Northeast Quarter of Section 1,
Township 22 South, Range 21 East, M.D.B. & M.
Board of Election:

Inspector:	Eloise Salyer
Alternate:	George Voll
Judge:	Margaret Gilkey
Alternate:	Ed Fischer
Judge:	Ed Howe
Alternate:	Robert Lundquist

"BE IT FURTHER RESOLVED that notice of said election be published once a week for three (3) weeks prior to said election in a newspaper of general circulation printed and published in the County of Tulare, State of California, and in a newspaper of general circulation printed and published in the County of Kings, State of California, and that notice of said election be posted at the District office and at three public places wihin the District; and

"BE IT FURTHER RESOLVED that the Secretary of this Board of Directors be, and he is hereby authorized to execute said notice of said election on behalf of this Board of Directors."

hereupon, Director Sherrill moved and Director Barnes seconded the motion for e adoption of such resolution. The roll was called on the motion with the following result:

VOTING IN FAVOR	VOTING AGAINST
Directors Howe, Robinson, Sherrill, Anderson, Barnes, Vandergriff	Salyer Gadd

he president declared the motion carried. At this moment landowner Clarence lyer entered the meeting.

The secretary then presented two forms of ballots prepared to be used at such ection. These were as follows:

Before this ballot is handed to the voter it must be marked on this perforated tab with the initials of a member of the election board. Before the voted ballot is placed in the ballot box this tab must be torn off by the Inspector, and it must be preserved and returned with the ballots.

Initials of Member of Election Board

MARK CROSS (+) ON BALLOT ONLY WITH RUBBER STAMP; NEVER WITH PEN OR PENCIL
(Fold ballot to this perforated line, leaving top margin exposed)

OFFICIAL BALLOT (A)
(Voting Basis, Assessed Value of Land)

TULARE LAKE BASIN WATER STORAGE DISTRICT
TULARE AND KINGS COUNTIES, CALIFORNIA
GENERAL DISTRICT PROJECT NO. 4 PROJECT ELECTION
TUESDAY, JULY 11, 1967

A report of the Board of Directors of the Tulare Lake Basin Water Storage District entitled "Report and Estimate of Cost on General District Project No. 4 for Tulare Lake Basin Water Storage District" was approved on July 5, 1966. The report sets forth a project for the District for the construction of two laterals from the California Aqueduct to the District and the construction of an office building for the District, and sets forth and describes the proposed works. There is on file with the report a recommendation of the Board of Directors that the project be carried out in accordance with the report. On May 19, 1967, the California District Commission made and entered an order approving and confirming the report and the recommendation. The purpose of the election is to determine whether the report and the recommendation of the Board of Directors of the District shall be adopted.

INSTRUCTIONS TO VOTERS: To vote in favor of the Proposition, stamp a cross (+) in the voting square after the words "Completion of Project—YES." To vote against the proposition, stamp a cross (+) in the voting square after the words "Completion of Project—NO." All marks except the cross (+) are forbidden. All distinguishing marks or erasures are forbidden and make the ballot void.

If you wrongly stamp, tear or deface this ballot, return it to the Inspector of the Election Board and obtain another.

PROPOSITION SUBMITTED TO VOTE OF VOTERS

PROPOSITION: Shall the report and the recommendation of the Board of Directors of the District on General District Project No. 4 be adopted	Completion of Project—YES Completion of Project—NO

Before this ballot is handed to the voter it must be marked on this perforated tab with the initials of a member of the election board. Before the voted ballot is placed in the ballot box this tab must be torn off by the Inspector, and it must be preserved and returned with the ballots.

No. ____

Initials of Member of Election Board

_____

MARK CROSS (+) ON BALLOT ONLY WITH RUBBER STAMP; NEVER WITH PEN OR PENCIL
(Fold ballot to this perforated line, leaving top margin exposed)

2—Deft's Ex. R

OFFICIAL BALLOT (A)
(Voting Basis, Assessed Value of Land)

TULARE LAKE BASIN WATER STORAGE DISTRICT
TULARE AND KINGS COUNTIES, CALIFORNIA
GENERAL DISTRICT PROJECT NO. 4 PROJECT ELECTION
TUESDAY, JULY 11, 1967

A report of the Board of Directors of the Tulare Lake Basin Water Storage District entitled "Report and Estimate of Cost on General District Project No. 4 of Tulare Lake Basin Water Storage District" was approved on July 5, 1966. The report sets forth a project for the District for the construction of two laterals from the California Aqueduct to the District and the construction of an office building for the District, and sets forth and describes the proposed works. There is on file with the report a recommendation of the Board of Directors that the project be carried out in accordance with the report. On May 19, 1967, the California District Commission made and entered an order approving and confirming the report and the recommendation. The purpose of the election is to determine whether the report and the recommendation of the Board of Directors of the District shall be adopted.

INSTRUCTIONS TO VOTERS: To vote in favor of the Proposition, stamp a cross (+) in the voting square after the words "Completion of Project—YES." To vote against the proposition, stamp a cross (+) in the voting square after the words "Completion of Project—NO." All marks except the cross (+) are forbidden. All distinguishing marks or erasures are forbidden and make the ballot void.

If you wrongly stamp, tear or deface this ballot, return it to the Inspector of the Election Board and obtain another.

PROPOSITION SUBMITTED	TO VOTE OF VOTERS
PROPOSITION: Shall the report and the recommendation of the Board of Directors of the District on General District Project No. 4 be adopted	Completion of Project—YES Completion of Project—NO

PROPOSITION SUBMITTED	TO VOTE OF VOTERS
PROPOSITION: Shall the report and the recommendation of the Board of Directors of the District on General District Project No. 4 be adopted?	Completion of Project—YES Completion of Project—NO

Initials of Elected Officer

_____

Thereupon Director Sherrill moved and Director Barnes seconded the motion and the motion was carried unanimously that such forms of ballots be adopted for use at such election.

3—Deft's Ex. R

Engineer Summers made the following report:

"1. Question has arisen in the Audit Committee regarding the District's position on the water quality standards, that have been recently adopted by the Central Valley Pollution Control Board. The Department of Water Resources has requested, and the Audit Committee has supported their request, that the contractors oppose the standards at the meeting of June 14, 1967 of the State Water Quality Board."

The Board of Directors took no action on the matter but did instruct Engineer Summers to attend the meeting and, after reviewing the matter there, to take such action as he thought was appropriate.

"2. He advised the Board that we are getting a tailgater problem on the upslope of Lateral 'A' in two different locations. This matter was discussed at the November meeting of the Board of Directors. He stated that one point the water had entered the new canal under the spoil bank, and at the other site it had not as yet started to impound against the spoil bank, but would do so shortly. He stated that if this problem got too serious we should consider pumping it into an existing ditch in the vicinity."

DEFENDANT'S EXHIBIT S.

"BE IT FURTHER RESOLVED that for the purposes of said election, one election precinct, designated Election Precinct No. 1, is hereby established in said District, the boundaries of which shall be the same as the boundaries of said District; and

"BE IT FURTHER RESOLVED that the voting place in said Election Precinct No. 1 is hereby designated and the persons to act as a board of election at said voting place are hereby appointed as follows:

Voting Place:

El Rico Ranch Office of J. G. Boswell Company,
located in the Northeast Quarter of Section 1,
Township 22 South, Range 21 East, M.D.B. & M.

Board of Election:

Inspector:	Eloise Salyer
Alternate:	George Voll
Judge:	Margaret Gilkey
Alternate:	Ed Fischer
Judge:	Ed Howe
Alternate:	Robert Lundquist

"BE IT FURTHER RESOLVED that notice of said election be published once a week for three (3) weeks prior to said election in a newspaper of general circulation printed and published in the County of Tulare, State of California, and in a newspaper of general circulation printed and published in the County of Kings, State of California, and that notice of said election be posted at the District office and at three public places wihin the District; and

"BE IT FURTHER RESOLVED that the Secretary of this Board of Directors be, and he is hereby authorized to execute said notice of said election on behalf of this Board of Directors."

ereupon, Director Sherrill moved and Director Barnes seconded the motion for e adoption of such resolution. The roll was called on the motion with the following result:

VOTING IN FAVOR	VOTING AGAINST
Directors Howe, Robinson, Sherrill, Anderson, Barnes, Vandergriff	Salyer Gadd

e president declared the motion carried. At this moment landowner Clarence lyer entered the meeting.

The secretary then presented two forms of ballots prepared to be used at such ction. These were as follows:

This Ballot Represents	Initials of election officer writing or stamping number of votes
VOTES	

The second form of ballot, being Official Ballot (B) was as follows:

Before this ballot is handed to the voter it must be marked on this perforated tab with the initials of a member of the election board. Before the voted ballot is placed in the ballot box this tab must be torn off by the Inspector, and it must be preserved and returned with the ballots.

No. ____

Initials of Member of Election Board

_____

MARK CROSS (+) ON BALLOT ONLY WITH RUBBER STAMP; NEVER WITH PEN OR PENCIL

(Fold ballot to this perforated line, leaving top margin exposed)

OFFICIAL BALLOT (B)

(Voting Basis, One Vote For Each Qualified Voter)

TULARE LAKE BASIN WATER STORAGE DISTRICT

Counties of Kings and Tulare, State of California

GENERAL DISTRICT PROJECT NO. 4 PROJECT ELECTION

Tuesday, July 11, 1967

A report of the Board of Directors of the Tulare Lake Basin Water Storage District entitled "Report and Estimate of Cost on General District Project No. 4 for Tulare Lake Basin Water Storage District" was approved on July 5, 1966. The report sets forth a project for the District for the construction of two laterals from the California Aqueduct to the District and the construction of an office building for the District, and sets forth and describes the proposed works. There is on file with the report a recommendation of the Board of Directors that the project be carried out in accordance with the report. On May 19, 1967, the California District Commission made and entered an order approving and confirming the report and the recommendation. The purpose of the election is to determine whether the report and the recommendation of the Board of Directors of the District shall be adopted.

INSTRUCTIONS TO VOTERS: To vote in favor of the Proposition, stamp a cross (+) in the voting square after the words "Completion of Project—YES." To vote against the proposition, stamp a cross (+) in the voting square after the words "Completion of Project—NO." All marks except the cross (+) are forbidden. All distinguishing marks or erasures are forbidden and make the ballot void.

If you wrongly stamp, tear or deface this ballot, return it to the Inspector of the Election Board and obtain another.

This Ballot Represents	Initials of election officer writing or stamping number of votes
_____ VOTES	_____

The second form of ballot, being Official Ballot (B) was as follows:

Before this ballot is handed to the voter it must be marked on this perforated tab with the initials of a member of the election board. Before the voted ballot is placed in the ballot box this tab must be torn off by the Inspector, and it must be preserved and returned with the ballots.

Initials of Member of Election Board

_____

MARK CROSS (+) ON BALLOT ONLY WITH RUBBER STAMP; NEVER WITH PEN OR PENCIL

(Fold ballot to this perforated line, leaving top margin exposed)

OFFICIAL BALLOT (B)

(Voting Basis, One Vote For Each Qualified Voter)

TULARE LAKE BASIN WATER STORAGE DISTRICT

Counties of Kings and Tulare, State of California

GENERAL DISTRICT PROJECT NO. 4 PROJECT ELECTION

Tuesday, July 11, 1967

A report of the Board of Directors of the Tulare Lake Basin Water Storage ict entitled "Report and Estimate of Cost on General District Project No. 4 Tulare Lake Basin Water Storage District" was approved on July 5, 1966. report sets forth a project for the District for the construction of two laterals the California Aqueduct to the District and the construction of an office ing for the District, and sets forth and describes the proposed works. There n file with the report a recommendation of the Board of Directors that the ject be carried out in accordance with the report. On May 19, 1967, the Cali- District Commission made and entered an order approving and confirming report and the recommendation. The purpose of the election is to determine ther the report and the recommendation of the Board of Directors of the District be adopted.

TRUCTIONS TO VOTERS: To vote in favor of the Proposition, stamp a cross (+) in the voting square after the words mpletion of Project—YES." To vote against the proposition, stamp a cross (+) e voting square after the words "Completion of Project—NO." All marks ept the cross (+) are forbidden. All distinguishing marks or erasures are for- en and make the ballot void.

f you wrongly stamp, tear or deface this ballot, return it to the Inspector of the tion Board and obtain another.

PROPOSITION SUBMITTED TO VOTE OF VOTERS

POSITION: Shall the report and the recommendation of the rd of Directors of the District on eral District Project No. 4 be adopted	Completion of Project—YES Completion of Project—NO

Initials of Elected Officer

_____

Thereupon Director Sherrill moved and Director Barnes seconded the motion and the motion was carried unanimously that such forms of ballots be adopted for use at such election.

Engineer Summers made the following report:

"1. Question has arisen in the Audit Committee regarding the District's position on the water quality standards, that have been recently adopted by the Central Valley Pollution Control Board. The Department of Water Resources has requested, and the Audit Committee has supported their request, that the contractors oppose the standards at the meeting of June 14, 1967 of the State Water Quality Board."

The Board of Directors took no action on the matter but did instruct Engineer Summers to attend the meeting and, after reviewing the matter there, to take such action as he thought was appropriate.

"2. He advised the Board that we are getting a tailgater problem on the upslope of Lateral 'A' in two different locations. This matter was discussed at the November meeting of the Board of Directors. He stated that one point the water had entered the new canal under the spoil bank, and at the other site it had not as yet started to impound against the spoil bank, but would do so shortly. He stated that if this problem got too serious we should consider pumping it into an existing ditch in the vicinity."

PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF FACTS.

Filed June 14, 1971

Defendant's statement of facts is essentially correct, subject to the following reservations:

1. The statement that "the state engineer of the State of California divided the district into eleven divisions" is not fully accurate. The division lines were established by the district itself, and submitted to the state engineer for his approval. The Amended Report and Estimate of Cost for Project 1, a large red volume, has been or is being submitted by the defendant as its Exhibit "B". Plaintiffs had intended filing this report themselves, but have not done so to avoid duplication. Exhibit "D" of that report is entitled "Report on Feasibility of Proposed Tulare Lake Basin Water Storage District", and was prepared by Mr. S. T. Harding, the district's consulting engineer, under date of June 1, 1926. Pages 73 and 74 of Exhibit "D" are attached hereto for convenience. The relevant material is as follows:

> *"Directors divisions*
>
> The proponents of the district request its division into eleven directors divisions. This is the storage district act. The actual divisions desired are also presented by the proponents. These comply with section 6 of the water storage district act in 'possessing the same general character of water rights or interests in and to the waters of such common source.' The changes in boundary [of the district] that have been recommended would not materially affect the proposed divisions.
>
> The proposed divisions follow generally the lines of existing reclamation districts. It is also

understood that they are adjusted to give the balance of representation desired by the parties to the agreement, entered as Exhibit F.

The proposed divisions comply with the law, and represent the desires of the larger part of the land owners. There appears to be little reason for changing them if they are satisfactory to the proponents. However, the number of directors requested is larger than is considered needed or desirable for such a district. Any disadvantages of such a number of divisions are internal matters of district management rather than of outside supervision, however.

Division 4 represents the lands in the reservoir area and the North Central Reclamation District. After the transfer of the reservoir lands to the storage district, if this is done, they would no longer be assessed and all vote in this division would be from the assessed value of the smaller area in the North Central Reclamation District.

As a reduction in the number of divisions would result in the need for revision of some portions of the agreement among the principal owners within the district, the establishment of the eleven divisions with the boundaries requested is recommended."

It will be noted that a map of Tulare Lake Basin Water Storage District showing the division boundaries is Exhibit "B" of the 1927 Report and Estimate of Cost. As defendant states in its factual submission, this report was filed with the state engineer on July 22, 1927, and he approved the report as filed, including the division

boundaries. But those boundaries originated with the proponents of the district.

It is true that the water storage district law required the dividing of the proposed district "into five, seven, nine, or eleven divisions so as to segregate into separate divisions land possessing the same general character of water rights . . ." [Water Code, §39777; stats. 1921, c. 914, p. 1731, sec. 6]. This was technically complied with, for all the lands in all the divisions in the defendant district were to have the same rights to district water. See page 24 of the Report and Estimate of Cost dated July 30, 1927, defendant's Exhibit "B":

> "That is to say, all waters—whatever that quantity may be—acquired by or under control of the District, are to be *prorated equally over the acreage* in that District. Or, in other words, all things being equal, every acre of land within the boundaries of your District will be equally benefited by your project."

It is true that no formal request has been made of the Board of Directors for a redivisioning. But both counsel for the district and the president of the district were cross-examined on the subject as set forth in plaintiffs' statement of facts in the 1967 case of *Salyer Land Company, et al. v. Tulare Lake Basin Water Storage District*. In the 1969 case of *Salyer Land Company v. Louis T. Robinson, et al.* (the complete record of which has been filed as plaintiffs' Exhibit 7) one of the grounds stated in the first amended complaint for the removal of the six defendant directors in that litigation was the failure to redivision the district. At that time the defendants argued that the district could only be redivisioned after the adoption of its first project.

[Defendant's "Reply Memorandum in Re Demurrer in Motion to Strike", *Salyer Land Company v. Louis T. Robinson, et al.*, Kings County Superior Court No. 20056, page 12 of Exhibit 7]. In the same year in which the above litigation was filed, §41152 of the Water Code, the provision for redivisioning of water storage districts was repealed, effected as of August 29, 1969. As the answer of the defendant admits, although the date is there mistakenly given as August 29, 1970, "Section 41152 was repealed, and at this time there is no statutory provision concerned with redivisioning the district." The plaintiffs accordingly take the position that they had no administrative remedy, and they will shortly file a brief on this point.

2. With reference to the sequence of events as to General District Project No. 4, on December 6, 1966 a proposed supplement to Project 4 did not receive the necessary two-thirds majority. On December 16, 1966 four of the directors who had assented to Project 4 at the meeting of July 5, 1966, notified the Secretary of the district and the California District Securities Commission that they had withdrawn such assent.

3. The statement on page 11 of defendant's statement of facts, "these small holdings are all leased for farming to larger operators" is subject to the reservation that such farmers as Marion Harris, Ronnie Harris and Malcolm Powers farm small leaseholdings which are not leased to large operators, as detailed on pages 19 and 20 of plaintiffs' statement of facts.

4. The statement on page 12 that there are no fire departments in the district is subject to the reservation that there is a public fire department situated at the old Crocket and Gambogy headquarters in Section 9,

Township 23 South, Range 22 East. A portion of the fire department sign is visible at the right of the photograph of the residence at the old Crocket and Gambogy headquarters, the photograph being a part of plaintiffs' Exhibit 15.

5. The statement that there are no police is subject to the reservation that the sheriff's office of Kings County provides police protection throughout Kings County.

6. The statement on page 12, "the Board actually exercises very little governmental power" is a conclusion of law rather than a statement of fact. Plaintiffs disagree, and consider all of the district's functions exclusively governmental under the holding of *Glenn-Colusa Irrigation District v. Ohrt*, 31 Cal. App. 2d 619 (1939). However, this is an issue of law rather than of fact.

Letter From Counsel to Court June 11, 1971.

Law Offices
THOMAS KEISTER GREER
110 Maple Avenue
Rocky Mount, Virginia 24151

Honorable M. D. Crocker
United States District Court
Eastern District of California
Federal Buidding
Fresno, California 93721

Re: *Salyer Land Company, et al. vs. Tulare Lake Basin Water Storage District* Civil No. F-414

Dear Judge Crocker:

It is my understanding that this case stands submitted on the fact statements filed by the plaintiffs and the defendant. It is my further understanding that the plaintiffs are to file their opening brief on or before June 30th, that the defendant is to file its brief on or before July 14th, and that the plaintiffs are to file their reply brief, if any, on or before July 28th.

With kindest regards, I am

Respectfully,

Thomas Keister Greer

TKG/pf

cc: C. Ray Robinson, Esq.
Ernest M. Clark, Esq.
Robert M. Newell, Esq.

Letter From Court to Counsel September 2, 1971.

UNITED STATES DISTRICT COURT
Eastern District of California
Fresno, California 93721

Thomas Keister Greer, Esq.
110 Maple Avenue
Rocky Mount, Virginia 24151

Re: *Salyer Land Company v. Tulare Lake Basin Water Storage District—Civil No. F-414*

Dear Mr. Greer:

The panel in the above-entitled case would appreciate supplemental memorandums directed to the subject:

> "Assuming the constitutional validity of the limitation of the franchise to landowners and the weighting of the vote in accordance with the value of the land of each landowner-voter, would an issue of malapportionment as between divisions in the district remain in the case, and, if so, what would be the views of the parties as to that remaining issue?"

Please submit the supplemental memorandums within 15 days.

Very truly yours,

M. D. Crocker

cc: Honorable James R. Browning
Honorable Robert H. Schnacke
C. Ray Robinson, Esq.
Robert M. Newell, Esq.
Ernest M. Clark, Esq.

Letter From Clerk to Counsel Feb. 18, 1972.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNA
Office of the Clerk
U. S. Court House
Fresno, California 93721

C. Ray Robinson
Attorney at law
650 W. 19th St.
Merced, Calif. 95340

Thomas Keister Greer
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Donnelly, Clark, Chase & Haakh
600 South Spring St.
Los Angeles, Calif.

Newell and Chester
650 So. Grand Ave., Suite 500
Los Angeles, Calif. 90017

Sirs:

Re: F-414-Civil
Salyer Land Co., et al. v. Tulare Lake Water, etc.

Enclosed herewith is a copy of memorandum and order of Judge Crocker and Judge Schnake and a copy of an opinion of Judge Browning concurring in part and dissenting in part.

Yours truly,

D. D. BUTLER
Deputy Clerk

encl.

cc: Attorney General
State of Calif.

Memorandum and Order.

Original Filed: February 17, 1972.

In the United States District Court, Eastern District of California.

Salyer Land Company, a California corporation, C. Everette Salyer, Fred Salyer, Lawrence Ellison, and Harold Shawl, Plaintiffs, vs. Tulare Lake Basin Water Storage District, a public district, Defendant. No. F-414 Civ.

This court has jurisdiction under section 1343 of Title 28 and section 1983 of Title 42 of the United States Code, and a three-judge court has been convened pursuant to section 2284 of Title 28 of the United States Code.

The case was submitted on factual statements of the parties and briefs, without testimony or oral argument. Plaintiffs were represented by C. Ray Robinson, Esq., and Thomas Keister Greer, Esq.; defendant was represented by Robert M. Newell, Esq., and Ernest M. Clark, Jr., Esq.

Plaintiffs are landowners or resident registered voters within the area covered by defendant, Tulare Lake Basin Water Storage District, which was organized pursuant to California law.

In this action, plaintiffs contend that California Water Code §§ 41000 and 41001[1] are unconstitutional in that they deny plaintiffs the equal protection of the

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[1] § 41000. *Qualification.* Only the holders of title to land are entitled to vote at a general election.

§ 41001. Vote *in precinct; number of votes.* Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars ($100), or fraction thereof, worth of his land, exclusive of improvements, minerals, and mineral rights therein, in the precinct.

law guaranteed by the fourteenth amendment of the Constitution of the United States in that they permit only landowners to vote and give them one vote for each $100 of assessed valuation. Thus non-landowners cannot vote, and the small landowners get fewer votes than the large landowners.

Plaintiffs seek an order of this court enjoining defendant from giving effect to these sections and requiring defendant to submit a plan whereby all residents be permitted only one vote regardless of land-ownership.

At the outset, defendant asks this court to abstain from rendering a decision, but abstention is not proper in this case as the California Supreme Court has already upheld the constitutionality of these two sections.

Defendant is a water storage district organized in 1926 under California law which limits its activities to the development and improvement of the water supply within the district, thus benefiting the land which alone bears the cost.

It performs no governmental functions of general concern to the populace and provides no service to the general public such as found by the court in *Burrey v. Embarcadero Municipal Improvement District* recently decided by the Supreme Court of California.

The State of California has a compelling interest in the development of its water resources, and limiting the vote to landowners is necessary to further this state interest because it is doubtful if the District would have been formed unless the persons paying the expenses could control them.

While it is true that the activities of the District affect the economy of the area which is of interest to

residents that are not landowners, this is an indirect interest and not a direct, primary and substantial interest that would entitle them to vote. Thus limiting the vote to landowners in this particular water district does not violate plaintiffs' constitutional rights, and the "one man, one vote" cases cited by plaintiffs are not controlling in this special purpose district.

Section 41001 providing one vote for each $100 of assessed valuation is not unconstitutional as the benefits and burdens to each landowner in the District are in proportion to the assessed value of the land, so permitting voting in the same proportion fairly distributes the voting influence.

The remaining issue in this case is the malapportionment of the divisions that is alleged in paragraph XII of the complaint. Plaintiffs pray that the District be required to submit a plan for holding all elections at large.

Defendant argues that sections 43730 and 41550 of the California Water Code provide adequate State remedies, that the remedy is not within the Civil Rights Act, and that if it is, this court should abstain due to the adequate State remedies.

California Water Code §§ 43730 and 41550 do not provide an adequate State remedy for malapportionment. Section 43730 pertains to improper board action and 41550 provides a means of forcing the board to hold an election. Section 41152 provided the redivisioning remedy which plaintiffs seek, but was repealed in September 1969. From that date to the present, there has been no adequate State remedy.

Section 39777 will not grant relief as it merely requires initial segregation in divisions "possessing the

same general character of water rights or interests in the water of a common source." Nor does section 41153 help, as it merely contemplates that the board may make a redivision order; however, there is no mandatory requirement present.

Where there is no State remedy and a Civil Rights violation occurs, 42 U.S.C. 1983 has been interpreted "to provide a remedy. . . ." [*McNeese v. Board of Education,* 373 U.S. 668, 672 (1963)].

Here we have divisions created by a state engineer (approved) acting under state law, and these divisions have been maintained by the Board of Directors also purporting to act under state law. This action is within 42 U.S.C. 1983. [See, *Monroe v. Pape,* 365 U.S. 167 (1961)].

The present divisions have not been redivisioned for 40 years. Total assessed valuation of the land in Division 4 is nearly three times greater than the total assessed valuation of Division 10 (Division 4—$1,954,547; Division 10—$688,425). The result is that $100 of assessed valuation in Division 10 has almost three times the voting power of $100 of assessed valuation in Division 4. In addition, Division 4 has 110 separate landowners, whereas Division 10 has only 4. Each Division is entitled to one director on the District's Board of Directors. Consequently, the 10 landowners in Division 4 have only one-third the representation on the Board when compared to Division 10.

Such malapportionment presents a classic violation of equal protection and therefore defendant is ordered

to submit a plan to correct this malapportionment within six months of the date this decision becomes final.

If defendant is unable to redivision the district into divisions which are reasonably equal in assessed valuation and also possess the same general character of water rights or interest in the water of a common source as required by section 39777 of the California Water Code, the plan may provide for elections at large.

Dated: February 17, 1972.

M. D. Crocker
United States District Judge
Robert H. Schnacke
United States District Judge

Salyer Land Company v. Tulare Lake Basin Water Storage District No. F-414 Civil.

Original filed Feb. 17, 1972.

BROWNING, Circuit Judge, concurring in part, dissenting in part:

Defendant asks this court to abstain from rendering a decision with respect to California Water Code §§ 41000[1] and 41001.[2] "But the abstention rule only applies where 'the issue of state law is uncertain'" *Wisconsin v. Constantineau,* 400 U.S. 433, 438 (1971), and here the meaning of the challenged state statutes is clear.

Turning to the merits, it is clear at the outset that the Equal Protection Clause applies not only to the challenged statutes but also to their implementation by the defendant district. "The Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the State." *Avery v. Midland County,* 390 U.S. 474, 579 (1968). Defendant and similar entities "are but the agents or representatives of the state in the particular locality in which they exist. They are organized for the purpose of carrying out the purposes of the legislature in its desire to provide for the general welfare of the state." *In re Madera Irrigation District,* 92 Cal. 296, 317, 28 Pac. 272, 276 (1891). *See Girth v. Thompson,* 11 Cal.App.2d 325, 328 (1970).[3]

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[1]See majority opinion at note 1.

[2]See majority opinion at note 1.

[3]California Water Code § 39059 declares that the powers conferred upon the board of directors of a water storage district "are police and regulatory powers and are necessary to the accomplishment of a purpose that is indispensable to the public interest." Section 39061 declares that use of water in a water stor-

To evaluate the constitutionality of the challenged voting rules, the purpose and effect of the rules must be examined in the context of the district's activity. "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interest which the State claims to be protecting, and the interests of those who are disadvantaged by the classifications." *Williams v. Rhodes*, 393 U.S. 23, 30 (1968) quoted in *Kramer v. Union Free School District*, 395 U.S. 621, 626 (1969).

I.

Exclusion of persons from the vote must be "carefully scrutinized," and can be sustained only if "necessary to promote a compelling state interest." *Kramer v. Union Free School District, supra*, 395 U.S. at 627.[4] It cannot be sustained unless "those excluded are in

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age district, and of facilities and property to carry out the district's functions under the statute, "is a public use."

Water storage districts are governed by California Water Code §§ 39000-48401. The Board of each district has "all power and authority necessary to enable it to fully perform the duties imposed upon it. . . ." § 43150, *see generally* §§ 43000-44000. This includes the power to employ and discharge persons on a regular staff and to contract for the construction of district projects. § 43152.

The district can initiate projects and supervise their completion. §§ 42200-42750. It can condemn private property for use in such projects. §§ 43530-43533. It may cooperate with and contract with other agencies, state and federal. § 43151.

The district can authorize general obligations bonds and interest-bearing warrants. *See* §§ 44900-45900. It can also impose tolls or other charges on the use of its water, irrigation mechanisms, and other services and facilities. It can levy "assessments" up to $2.50 per acre for organizational expenses and costs incurred in undertaking specific projects; for all other purposes, assessments are prorated to the extent of benefit conferred by the district project. *See* §§46000-47900.

[4]*See also* Cipriano v. City of Houma, 395 U.S. 701, 704 (1969).

fact substantially less interested or affected than those the statute includes." *Id.* at 632.[5] Thus the interest of the state in confining the franchise to owners of land in the district must be weighed against the interest of those said to be disadvantaged by this classification, namely, lessees of such property and non-landowning district residents.

After review, it appears that there is compelling reason for disenfranchisement of non-owner, non-lessee residents of the district, but not, contrary to the majority's holding, for the exclusion of lessees of district land.

The relevant facts may be briefly summarized.

Much of California's agricultural land suffers from too little water or, intermittently, from too much. Conservation, distribution, and control of the water supply are major state concerns.[6] The California Legislature has authorized a wide variety of special instrumentalities, including water storage districts, to provide a flexible response to water problems on a local basis. These special purpose agencies are credited with "vastly expanding water distribution facilities" in the state. Rogers & Nichols, Water for California, Vol. 2, § 448, at 35.

The defendant water storage district consists of 193,000 acres of intensively cultivated, highly fertile farm land. The district is sparsely populated—only 78 persons, including 18 children, live within its boundaries. This is said to be typical of such districts because the lands are agricultural, and because they are commonly

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[5] *See also* Cipriano v. City of Houma, *supra*, 395 U.S. at 704. Phoenix v. Kolodziejski, 399 U.S. 204, 207, 212-213 (1970).

[6] *See, e.g.*, California State Constitution, Article XIV, § 3; California Water Code §§ 100, 104, 105. *See* note 2.

arid, subject to flooding,[7] or both. Nearly 85 per cent of the land in the district is farmed by four corporations. The residents of the district are all employees, or members of employees' families, of one or another of the four farming corporations. Only two residents are landowners; not directly, but through ownership of a corporation that farms about 16 per cent of the district's land.

Landowners have a direct and substantial interest in the efficient and effective management of the district. In keeping with the purpose of water storage districts, defendant district is authorized to plan and execute projects "for the acquisition, appropriation, diversion, storage, conservation, and distribution of water." Calif. Water Code § 42200.[8] Defendant district has adopted and executed three such projects since its formation in 1924. These projects involved the purchase and storage of water for irrigation of lands within the district and the construction of a water delivery system. Each project required a multi-million dollar expenditure. In accordance with the statute (Calif. Water Code § 46176), the costs were assessed upon the lands of the district in proportion to benefits received by each tract.

The economic burden from district projects *cannot* fall on non-owner, non-lessee residents. There are no

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[7]Nearly half of the land in the defendant district was flooded in 1969. One third of the district still remains under water.

[8]The plans may also include "any drainage or reclamation works connected therewith, and the generation of hydroelectric energy incident thereto, and to sale and distribution thereof. . . ." By the express terms of the statute, however, these additional powers may be used only in connection with and incidental to a plan to acquire, divert, store, conserve, and distribute water in the district. There is no evidence that the defendant district engaged in the generation, sale, or distribution of electric power.

forms of non-property oriented taxes, assessments, or other means through which district costs could be spread to others. *Cf. Cipriano v. City of Houma*, 395 U.S. 701, 705 (1969); *Phoenix v. Kolodziejski*, 399 U.S. 204, 209-10 (1970).

The district performs no governmental function and provides no service of direct concern to residents of the district. *Cf. Phoenix v. Kolodziejski*, 399 U.S. at 206, 209. Its activities relate solely to the storage and distribution of water for use in farming the land.[9] These functions and services would not differ at all if no one lived in the district. The district has nothing to do with furnishing police and fire protection, schools, roads, and other governmental services and facilities usually provided to residents of an area. For that reason, people who happen to reside within the physical boundaries of the district are not constituents of the officers or board of directors of the district in any real sense.

As employees of the farming corporations, residents of the district have an interest in the success of the farm operation and, hence, in the activities of the district that contribute to the success of those operations. But this interest is no different in kind or degree from the interest of other employees of the farming corporations who do not reside in the district, and is little different from the interest of non-resident suppliers and others whose economic well-being may be linked to the success of the district's farming opera-

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[9]Plaintiffs argue that defendant district has the power to, and does, engage in flood control activities, and that these are obviously of interest to residents of the district. The power of the district in this respect is disputed, but any such power the district might possess would be limited to flood control connected with and incident to the exercise of the district's primary functions of water storage and distribution.

tions. If residents are constitutionally entitled to vote in district elections because of their interest as employees, so too are non-resident employees and, perhaps, all other economically affected non-residents.

Against this factual background, it is possible to evaluate the state's interest in limiting the franchise and the impact of the limitation upon disenfranchised lessees and residents.

The state's interest in the management of its water resources, and, therefore, in the creation and effective operation of water storage districts and similar agencies, is obviously a vital one. Limitation of the franchise to those who own or lease district land is necessary to further this compelling state interest for two reasons.

First, the limitation is necessary to induce landowners to join in the creation of such districts. It is inconceivable that the non-resident owners, controlling 85 per cent of the land in the defendant district, would have agreed to formation of the district or its continued existence had they been denied control over the selection and implementation of the multi-million dollar district projects designed solely to benefit the lands of the district and to be paid for entirely by assessment upon those lands. *See Schindler v. Palo Verde Irrigation District*, 1 Cal.App.3d 831, 839, 82 Cal. Rptr. 61 (1969).[10] It is also unlikely that non-resident land-

[10]There are, in fact, "unique problems that make it necessary to limit the vote. . . ." Phoenix v. Kolodziejski, 399 U.S. 204, 213 (1970). We are told that some California water storage districts have no residents, or only a nominal number. Unless ownership of an interest in the district's land were a permissible basis for the franchise, such districts could not function at all.

(This footnote is continued on next page)

owners would have participated had landowner control been subject to unpredictable dilution or deliberate manipulation[11] by the votes of residents having only a remote interest in the district's operations.

In the second place, in view of the nature of the issues to be voted upon, the exclusion of non-owner, non-lessee residents from the franchise in a water storage district is dictated by the state's interest in obtaining intelligent and responsible decisions as to the most effective water development program for the lands of the respective districts.[12]

Turning to those who are assertedly disadvantaged, it is evident from the foregoing discussion that the interest of residents who neither own nor lease property within the district is substantially less significant than that of the owners, and is both remote and indirect. Their exclusion from district elections can have only a minimal impact upon them, and is amply justified by the compelling state interest.

Contrary to the majority's view, however, this is not true of the exclusion of those who lease lands in the district for farming. This group's interest in the district's projects to increase the water available for farming and to improve its distribution is indistinguishable from the interest of the owners. They are also equally

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A similar problem faces reclamation districts organized under Division 15 of the California Water Code. Voting in these districts is also limited to property owners. *See* § 50704. There are no residents on seven such reclamation districts totaling 88,654 acres that are located within the boundaries of defendant water district.

[11]Sixty-six of the 78 persons now reported to reside in the district are employees of the corporate farms living on the corporation's land.

[12]Oregon v. Mitchell, 400 U.S. 112, 242 (1971) (opinion of Brennan, White, and Marshall, JJ); Lassiter v. Northampton Elections Bd., 360 U.S. 45, 51 (1959).

interested in the cost of the district's projects, for this expense will be passed on to them by express agreement or in the form of increased rentals. *See, e.g., Phoenix v. Kolodziejski, supra,* 399 U.S. 204, 210-22.[13] And obviously the state's interest in intelligent and responsible decisions regarding the district's water management program is not advanced by excluding those who actually farm the land.

The only substantial question is whether lessees must be excluded to induce landowner participation. Nothing in the record supports an affirmative answer; and the contrary is strongly suggested by the fact that the four corporations that farm 85 per cent of the district's land are major lessees of land as well as the largest landowners.

Thus, excluding non-owner, non-lessee residents advances the state's overall interest in intelligent and effective water resources development by encouraging the formation of water storage districts and by helping assure informed and interested voters in district elections.

II

Since ownership of a property interest in district land may be required as a qualification for voting in water storage district elections, it might seem to follow that it would also be permissible to weight the votes in proportion to the value of the voter's land, as the majority holds. *See Schindler v. Pablo Verde Irrigation District, supra,* 1 Cal.App.3d at 839. Brief consideration demonstrates, however, that this is not so.

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[13]Defendant suggests that the lessees might obtain a provision in the lease for a proxy from the lessor as allowed by § 41002. If a statute otherwise infringes upon the Equal Protection Clause, the infringement of constitutional rights is not ameliorated by a possibility that relief might be obtained through private contracts.

In a wide variety of contexts the Supreme Court has emphasized that where an election concerns the exercise of important governmental powers having a substantial impact upon all members of the particular electorate, as here, the state is required to insure that the vote of every member of the electorate counts the same, so far as practicable, as that of every other member of the electorate.[14] *In Hadley v. Junior College District*, 397 U.S. 50, 58-59 (1970), Mr. Justice Black summarized the Supreme Court's position in language applicable to this case:

> "[A] State may, in certain cases, limit the right to vote to a particular group or class of people. As we said before, '[v]iable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation.' [Sailors v. Board of Education, v. Board of Education, 387 U.S. 105, 110-11 (1967)] *But once a State has decided to use the process of popular election and 'once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.'* Gray v. Sanders, 372 U.S. 368, 381 (1963)" (emphasis added).

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[14]Avery v. Midland County, 390 U.S. 474, 485 (1968); Swann v. Adams, 385 U.S. 440 (1967); Lucas v. Colorado Gen. Assembly, 377 U.S. 713 (1964); Burns v. Richardson, 384 U.S. 73 (1966); Roman v. Sincock, 377 U.S. 695 (1964); Davis v. Mann, 377 U.S. 678 (1964); Maryland Committee v. Tawes, 377 U.S. 656 (1964); WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964); Reynolds v. Sims, 377 U.S. 533, 562 (1964); Wesbury v. Sanders, 376 U.S. 1, 7-8 (1964); Gray v. Sanders, 372 U.S. 368, 379-80 (1963).

Cf. id. at 56. As Justice White said in *Phoenix v. Kolodziejski, supra,* 399 U.S. at 209, "Presumptively, when all citizens are affected in important ways by a governmental decision subject to a referendum, *the Constitution does not permit weighted voting* or the exclusion of otherwise qualified citizens from the franchise. . . . Placing such power in property owners alone can be justified only by some overriding interest of the owners that the State is entitled to recognize" (emphasis added).

Defendant has identified no compelling state interest in weighted voting in water storage district elections.

The statute itself weakens the contention that landowners would decline to participate in the formation of a water storage district if each vote weighed equally. A majority of the *number* of landowners is normally required to form such a district (Calif. Water Code § 39400),[15] and a majority of the *number* of landowners voting is required to approve a district project. Calif. Water Code § 42550.

Neither can it be said that the state's interest in intelligent and responsible elections is served by weighted voting. There is nothing in the record to support the assumption that a small landowner is less likely than a large one to possess the information and understanding of water development problems that is requisite to intelligent and responsible voting on the affairs of a water storage district. *Cf. Harper v. Virginia Board of Elections,* 383 U.S. 663, 688 (1966). And the landowner's interest in finding and implementing solutions

[15]The alternative is "not less than 500 petitioners, each of whom is the holder of title to land therein and which petitioners include the holders of title to not less than 10 percent in value of the land included within the proposed district." § 39400.

to those problems is no less acute because his operation may be of greater economic consequence to him; and is small. Efficient production from his smaller acreage the lesser absolute share of the cost of district projects he may[16] be required to bear may impose a greater burden. As Judge Wisdom said in a related context, "In terms of voting responsibility, there is no necessary correlation between the amount of any assessment and the degree of interest a taxpayer may have in a particular bond issue. A ten thousand dollar house to one person may mean more to that person than a hundred thousand dollar house to another." *Stewart v. Parish School Board of Parish of St. Charles,* 310 F. Supp. 1172, 1179 (E.D. La. 1970), *aff'd* 400 U.S. 884 (1970). *See also Burry v. Embarcadero Municipal Improvement District,* 5 Cal.2d 671 (1971).

III

The order of the California Department of Water Resources approving the formation of the defendant district divided the district into eleven divisions for election of directors to the district's board.[17]

Each division elects one director, but the number of landowners in the divisions varies from 110 in di-

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[16]Project costs are distributed in proportion to the benefit conferred upon the particular tract rather than in proportion to the tract's value or size. California Water Code § 46176.

[17]California Water Code § 39777 reads:

"*Division of district.* The order on final hearing shall also divide the proposed district into five, seven, nine, or eleven divisions so as to segregate into separate divisions lands possessing the same general character of water rights or interests in the water of a common source. The divisions shall be numbered first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, or eleventh, according to the number of the division."

vision four to four in division ten.[18] While the record does not show the number of lessees in each division, there is no reason to believe that the gross malapportionment among the divisions will be corrected merely by including lessees among those qualified to vote.

Such malapportionment does indeed present a classic violation of equal protection. *See Reynolds v. Sims*, 377 U.S. 533, 562-63 & n.40 (1964). As Mr. Justice Black said in *Hadley, supra*, after finding that important governmental functions were involved having sufficient impact throughout the constitutency, "when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal number of voters can vote for proportionally equal numbers of officials." 397 U.S. at 56.

It is suggested that the apportionment reflects compliance with the statutory directive that division lines be drawn "so as to segregate into separate divisions lands possessing the same general character of water rights." *See* note 17. It is unnecessary to consider whether this would justify the result, if true. The record is clear that the divisional lines were not drawn on this basis.[19] The record also demonstrates that the

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[18]Even were the weighted voting practices of the district valid, the malapportionment would be substantial. The assessed value of the land in division four is $1,954,547, while that of division ten is $688,425.

[19]A "Report on Feasibility of Proposed Tulare Lake Basin Water Storage District," submitted to the California District Securities Commission as an exhibit to defendant district's Amended Report and Estimate of Cost for Project 1, states at pages 73-74:

> "The proposed divisions follow generally the lines of existing reclamation districts. It is also understood that they are adjusted to give the balance of representation desired by the parties to the agreement. . . ."

statutory directive is irrelevant to the drawing of division lines in the defendant district for all water rights in the district are of the same character.[20]

Finally, defendant seems to imply that the malapportionment of divisions does not involve state action subject to the Equal Protection Clause. But as noted earlier, the present divisions were approved by the California Department of Water Resources as required by the statute (see note 17), and "the prohibitions of the Fourteenth Amendment extend to 'all actions of the State denying equal protection of the laws' whatever the agency of the State taking the action. . . ." *Cooper v. Aaron*, 358 U.S. 1, 17 (1958). *See also Avery v. Midland County, supra*, 390 U.S. 474, 479-80.

James R. Browning
Circuit Judge

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[20]Plaintiffs' factual statement, which defendant accepted without response, states:

"The water rights of Tulare Lake Basin Water Storage District, for example, its water right in the Kings River as stated in the Kings River Schedule, and its water right derived from its contract with the state of California, are for the equal benefit of the lands in the District. That is to say, there are no gradations or priorities within the District as to District water."

The following appears in defendant's Amended Report and Estimate of Cost for Project 1 (see note 19):

"That is to say, all waters—whatever that quantity may be—acquired by or under control of the District, are to be *prorated equally over the acreage* in that District. Or, in other words, all things being equal, every acre of land within the boundaries of your District will be equally benefited by your project." (Emphasis in original.)

Notice From Clerk to Counsel March 10, 1972.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Office of the Clerk
5408 Federal Building
1130 O Street
Fresno, California

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Sacramento. Calif. 95814

RE: F-414-Civ.
Salyer Land Co. v. Tulare Lake Water

Pursuant to the order of the Hon. M. D. Crocker. You are hereby notified that JUDGMENT (heretofore filed on February 17, 1972) in each of the above-entitled cases was entered in the docket on March 10, 1972, pursuant to Rule 77(d) F. R. C. P. When the time for

appeal has expired (without appeal being taken), it will be appreciated if counsel will arrange for pick-up of their exhibits without further notice.

I hereby certify that this notice was mailed on March 10, 1972.

CLERK, U. S. DISTRICT COURT,
BY
D. D. BUTLER, Deputy Clerk

Supreme Court of the United States

No. 71-1436

Salyer Land Company, Et Al.,

Appellants

v.

Tulare Lake Basin Water Storage District

APPEAL from the United States District Court for the Eastern District of California.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

June 26, 1972

SUBJECT INDEX

INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

Statutes

Textbook

IN THE

Supreme Court of the United States

October Term, 1971

No. .....

SALYER LAND COMPANY, a California corporation, C. EVERETTE SALYER; FRED SALYER; LAWRENCE ELLISON; and HAROLD SHAWL,

Appellants,

vs.

TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district,

Appellee.

On Appeal from the United States District Court for the Eastern District of California.

JURISDICTIONAL STATEMENT.

Appellants appeal from the judgment of the United States District Court for the Eastern District of California (three judges) entered on March 10, 1972, denying an injunction restraining the enforcement, operation and execution of §§41000 and 41001 of the California Water Code, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Opinion Below.

The opinion of the United States District Court for the Eastern District of California (three judges) is not yet reported. Copies of the memorandum and order convening a three-judge court, of the memorandum and order of that court, and of the concurring and dissenting opinion of Circuit Judge Browning are attached hereto as Appendix A.

Jurisdiction.

This suit was brought under 28 U.S.C. §2281, to restrain the enforcement, operation and execution of a State statute as unconstitutional. The judgment of the United States District Court (three judges) was rendered February 17, 1972, and entered March 10, 1972. Notice of appeal was filed in that court on March 14, 1972. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by Title 28, U.S. Code, §§ 1253 and 2101(b).

Statutes Involved.

§§ 41000 and 41001 of the California Water Storage District Law (Water Code, §§ 41000 and 41001) are as follows:

> "§41000. Qualification. Only the holders of title to land are entitled to vote at a general election.
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> "§41001. Vote in precinct; number of votes. Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars ($100), or fraction thereof, worth of land, exclusive of improvements, minerals, and mineral rights therein, in the precinct."

The Questions Presented.

1. Does a statute granting each landowner in a water storage district one vote for each one hundred dollars of assessed valuation deny smaller landowners the equal protection of the laws?

2. Does a statute which restricts the franchise in a water storage district to landowners deny farmers and residents not owning land the equal protection of the laws?

Statement of the Case.

Plaintiffs C. Everette and Fred Salyer are two of the eleven directors of defendant Tulare Lake Basin Water Storage District, which comprehends 193,000 acres in Kings and Tulare Counties, California. Plaintiff Salyer Land Company is a large owner and lessee of land in that district. Plaintiff Harold Shawl is a small landowner, and plaintiff Lawrence Ellison is a resident of the district who owns no land. All joined in an action filed in the United States District Court for the Eastern District of California on May 5, 1970, challenging the constitutionality of §§ 41000 and 41001 of the California Water Code limiting the franchise in water storage districts to landowners, and weighting the ballot by granting one vote for each one hundred dollars of assessed valuation. The complaint also alleged that the district was malapportioned.

On November 13, 1970 United States District Judge Crocker filed a memorandum and order stating that the complaint "presents a substantial constitutional question as to whether the sections of the California Water Code are in conflict with the United States Constitution", and convening a three-judge court. That court, which was composed of Circuit Judge Browning

and District Judges Crocker and Schnacke, received the case on an agreed statement of facts, and rendered its decision February 17, 1972. The majority, composed of Judges Crocker and Schnacke, held Water Code sections 41000 and 41001 constitutional, sustaining both the exclusion of non-landowners from the franchise and the weighting of that franchise according to assessed valuation. Circuit Judge Browning concurred in so much of the opinion as excluded non-landowning residents from the ballot, but dissented from the exclusion of farmer lessees and from the weighting of the franchise by assessed valuation. All three judges agreed that the district was malapportioned, the majority finding its failure to redivision itself for forty years "a classic violation of equal protection", and it was directed "to submit a plan to correct this malapportionment within six months of the date this decision becomes final". Plaintiffs have appealed from that part of the judgment sustaining the validity of §§ 41000 and 41001 of the Water Code.

The Questions Are Substantial.

Tulare Lake Basin Water Storage District is a political subdivision of the State of California[1], closely akin in substance and function to an irrigation district.[2] The great difference is in government. In irri-

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[1]Plaintiff's Exhibit 14 is an opinion of the Attorney General of California dated February 20, 1969, the salient portion of which is as follows: "I have concluded that water storage districts are considered political subdivisions of the State". Compare the language of *Avery v. Midland County*, 390 U.S. 474, 479 (1968): "The Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the State".

[2]Calif. Water Code §39060 is as follows: "The [water storage] districts formed pursuant to this division are districts of the nature of irrigation, reclamation, or drainage districts in re-

gation districts all registered voters have the franchise.[3] In water storage districts none may vote but landowners[4] and their vote is weighted; there is one vote for each one hundred dollars of assessed valuation.[5] The result is that almost all the seventy seven residents of the district are disenfranchised. Farmers leasing but not owning land, although vitally interested in and affected by the district's operation, have no voice in its governance. The hierarchy of votes among landowners runs from one vote each for certain very small landowners to 37,825 votes for the J. G. Boswell Company. As of the date of filing this litigation six of the eleven directors of the district were Boswell employees or stockholders. Elections have little point in such a system, and although California law provides for general elections in water storage districts every other year,[6] this district had had none since 1947.[7]

Under California law a unit such as Tulare Lake Basin Water Storage District is exclusively governmen-

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spect to all matters contemplated in the provisions of the constitution of the State of California relating to irrigation, reclamation, or drainage". Defendant district has conceded that water storage districts and irrigation districts "are virtually identical in all respects relevant to this case". Reply memorandum filed September 30, 1970, page 8.

[3]Calif. Water Code §20527; Elections Code, §§ 20, 21.

[4]Calif. Water Code §41000.

[5]Calif. Water Code §41001.

[6]Calif. Water Code, §41300.

[7]Plaintiff Salyer Land Company called a special election in 1967, Calif. Water Code §41550. On May 19, 1967 the district's then and present president, longtime Boswell employee, director and stockholder Louis T. Robinson, addressed the California Districts Securities Commission as follows:

"MR. ROBINSON: I know you shouldn't forecast elections and that causes me a little hesitancy to say what I am going to say.

(This footnote is continued on next page)

tal.[8] Upon formation of a water storage district all water rights of the state within the district are given, set apart and dedicated to it.[9] Water is the life blood of California; the special importance of water is recognized both by its constitution[10] and statutes.[11]

Apart from its control of California's most vital natural resource, Tulare Lake Basin Water Storage District acts in a governmental capacity. It had a budget of $481,000 in 1970 and $405,000 in 1971. It owns laterals connecting with the California Aqueduct which have been constructed "at a cost of approximately $2,500,000."[12] It possesses and has exercised the

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"*The eleven divisions in this large farming operation are completely controlled.* You are going to have the same eleven directors on Tuesday that you have got today—with one exception. One of the directors is having some health trouble and he is going to be replaced; but other than that, they are going to be the same eleven directors."

* * *

"MR. ROBINSON: Well, *I have no concern about the election.*

"But suddenly if a new board of directors were to come in, why then I would have nothing but opinion. But I have no concern about the election. *The eleven divisions are controlled by people with enough votes to put back the same directors they have now*—including the two Salyers that are dissenting at this time. They will be returned; the other nine will be returned."

(Emphases added throughout this jurisdictional statement.)

[8]"State agencies such as irrigation or reclamation districts * * * are agencies of the state whose functions *are considered exclusively governmental;* their property is state owned, held only for governmental purposes; they own no land in the proprietary sense." *Glenn-Colusa Irrigation District v. Ohrt,* 31 Cal.App.2d 619, 88 P.2d 763, 765 (1939).

[9]Calif. Water Code, §43158.

[10]Article 14, Section 3: "It is hereby declared that because of the conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable. . . ."

[11]Calif. Water Code, §§ 100, 102, 104, 105.

[12]Answer of defendant, page 8.

power of eminent domain.[13] It enjoys the tax immunity granted by the State of California to public bodies.[14] It is subject to the provisions of the statute conferring governmental immunities and to the exceptions therefrom imposing liability.[15] It may issue general obligation bonds secured by assessments levied on the lands in the district.[16] The district may provide tolls and charges for the use of water, irrigation, and power,[17] and it may sell surplus water and power.[18]

Tulare Lake Basin Water Storage District submitted the opinion of the Attorney General of California that it is a political subdivision of the state as part of an application for federal moneys, pursuant to the Federal Disaster Act, Public Law 875, and received $234,512.24 from the federal government pursuant to that application. The federal legislation authorizing this expenditure limited the grants to "any project of a State, county, municipal or other local government agency for flood control, navigation, irrigation, reclamation, public power, sewage treatment, water treatment, watershed development, or airport construction. . . ."[19]

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[13]Calif. Water Code, §43530.

[14]Calif. Water Code §43508.

[15]Calif. Government Code, §811.2.

[16]Calif. Water Code §§ 4550 ff.

[17]Calif. Water Code §§ 43006 ff., Calif. Water Code §§ 43025 ff.

[18]Calif. Water Code §§ 43507, 43533, 43555, 43001, 43026. An official summary of the powers and functions of water storage districts, taken from Bulletin No. 155, Department of Water Resources, State of California, "General Comparison of California Water District Acts", is attached as Appendix C.

[19]42 U.S.C.A. §1855ee.

The defendant district comprises most of the dry bed[20] of Tulare Lake in Kings and Tulare Counties, California. Four major operators, the J. G. Boswell Company, plaintiff Salyer Land Company, West Lake Farms and South Lake Farms, farm almost eighty five per cent of the land in the district. The remaining fifteen per cent is farmed by smaller farmers; if the latter be lessees they are accorded no voice whatever in the functions of the district. The *amici curiae*[21] and the defendant have been at some pains to justify this situation. Counsel for California Central Valleys Flood Control Association claimed below that this problem

> ". . . is easily remedied within the existing procedure by the tenant requesting in his lease a provision for a proxy from the lessor (as allowed in Section 41,002) to cast the lessor's votes in district elections in exchange for the obligation to pay the district assessments on the land leased."[22]

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[20]The great flood of 1969, largest since the legendary flood of 1906, inundated approximately 88,000 of the district's 193,000 acres. Evaporation and irrigation use gradually dissipated the water, and the lake area became completely dry again in August, 1971.

[21]The California Central Valleys Flood Control Association filed a brief *amicus curiae* upon its representation that its constituent districts "all vote on the same basis as the defendant in this action, and accordingly the decision rendered herein will have drastic and far reaching effects upon all reclamation districts in California". The Irrigation Districts Association of California also filed a brief *amicus curiae*, stating that that Association "is vitally interested in any attack on landowner voting qualifications in view of the fact that a majority of the over 250 public districts which are members of the Association, use landownership voting principles in some form or another under the various State statutes under which they are formed. The members of the Association distribute for irrigation, municipal and domestic use, over 75% of the water in the State of California".

[22]Brief of California Central Valleys Flood Control Association, page 10.

Counsel for the Irrigation Districts Association of California, put it like this:

> "Certainly, lessees of owners have a more direct interest and are perhaps more greatly 'affected' by District activities. Many leases, however, are on a one year or year to year basis. In each case their occupancy is contractual so to that extent they may bargain for and receive such assurances as they request as to how the landowner will act in reference to his control over District activities."[23]

The defendant district was more candid than either of the *amici:*

> ". . . If the lessee's bargaining position is strong enough, he can perhaps by contract acquire a proxy to cast his landowner's ballots. If his bargaining position is not that strong, he will have to make the best deal he can. . . ."[24]

Judge Browning was unimpressed with this reasoning.

> "Defendant suggests that the lessees might obtain a provision in the lease for a proxy from the lessor as allowed by §41002. If a statute otherwise infringes upon the Equal Protection Clause, the infringement of constitutional rights is not ameliorated by a possibility that relief might be obtained through private contracts."

The majority below did not discuss the problem of the farmer lessees. This voteless group is obviously in-

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[23]Brief of Irrigation Districts Association of California, page 20.

[24]Defendant's Reply Brief, pages 9, 10.

terested and affected, by any criterion, and Judge Browning addressed himself to the issue:

> "Contrary to the majority's view, however, this is not true of the exclusion of those who lease lands in the district for farming. This group's interest in the district's projects to increase the water available for farming and to improve its distribution is indistinguishable from the interest of the owners. They are also equally interested in the cost of the district's projects, for this expense will be passed on to them by express agreement or in the form of increased rentals. *See, e.g., Phoenix v. Kolodziejski, supra,* 399 U.S. 204, 210-11. And obviously the state's interest in intelligent and responsible decisions regarding the district's water management program is not advanced by excluding those who actually farm the land."

The Court below was unanimous in permitting the exclusion of plaintiff Lawrence Ellison from the ballot, despite the fact that Ellison is 62, has been in the area for forty years, has held responsible positions with several of the larger agricultural operators in the district, is interested in water matters, is a registered voter and a resident of the district, and would like to vote. It is said that he does not have a sufficient interest. It is difficult to agree. He lost his job with the J. G. Boswell Company because of the layoffs occasioned by the 1969 flood. The record in this case demonstrates that the flooded area was increased over three feet in depth by the reception of 300,000 acre feet of flood water from the Kern River. This would have been reduced to approximately 100,000 acre feet had Buena Vista Lake been used for flood stor-

age.[25] In past years the flood waters of the Kern River have filled Buena Vista Lake in Kern County before going on to Tulare Lake. 1969 is the first year in recorded history in which this was not the case. The record made in the trial court shows that the non-Boswell directors of the defendant district sought to have it take action to ensure that Buena Vista Lake receive the flood waters of the Kern to its full capacity, a position the record demonstrates the defendant district uniformly to have taken in the past. In 1969 the six votes of the J. G. Boswell Company were cast to prevent the defendant district from so acting; the reason for the break with precedent was that in 1969 the J. G. Boswell Company was itself farming the whole of Buena Vista Lake. It was at this time that plaintiff Salyer Land Company, which itself farms some 40,000 acres inside and outside the defendant district, and whose interest might reasonably be supposed to have lain with weighted landowner voting, became convinced that it was a poor system. But those who say that the residents have no interest were not at Tulare Lake in 1969. The water rose to a height of 192.5 U.S.G.S. datum, higher than any residence in the district. Had the major levees broken, the homes would have been flooded. The minutes of the meeting of the board of directors of the defendant district held March 4, 1969, at the height of the flood emergency, are plaintiffs' Exhibit 6 in the record made in the court below. That meeting determined, on a vote of six to four, that the flood waters of the Kern River would come into the district, while Buena Vista Lake remained dry. Anyone who says that persons occupying homes in the

[25] A record was made on this in the court below, and the fact is not disputed by defendant.

district were not vitally interested in and affected by that decision, with great respect, simply was not there.

Even more indefensible than the exclusion of residents from the franchise, however, is the weighting of the ballot by assessed valuation. The result is to give several of the smaller landowners one vote each. Thomas J. Amos has one vote, as do Ada Hornbeak and Rose Catanz. Plaintiff Harold Shawl shares 23 votes with his partner, springing from the ownership of 65 acres. But the J. G. Boswell Company is entitled to vote 37,825 times. Judge Browning dissented from the majority on the issue of the weighted franchise:

> "Defendant has identified no compelling state interest in weighted voting in water storage district elections.
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> "Neither can it be said that the state's interest in intelligent and responsible elections is served by weighted voting. There is nothing in the record to support the assumption that a small landowner is less likely than a large one to possess the information and understanding of water development problems that is requisite to intelligent and responsible voting on the affairs of a water storage district. *Cf. Harper v. Virginia Board of Elections*, 383 U.S. 663, 668 (1966). And the landowner's interest in finding and implementing solutions to those problems is no less acute because his operation is small. Efficient production from his smaller acreage may be of greater economic consequence to him; and the lesser absolute share of the cost of district projects he may be required to bear may impose a greater burden. As Judge Wisdom said in a related context, 'In terms of voting re-

sponsibility, there is no necessary correlation between the amount of an assessment and the degree of interest a taxpayer may have in a particular bond issue. A ten thousand dollar house to one person may mean more to that person than a hundred thousand dollar house to another.' *Stewart v. Parish School Board of Parish of St. Charles,* 310 F. Supp. 1172, 1179 (E.D. La. 1970), *aff'd* 400 U.S. 884 1970). *See also Burrey v. Embarcadero Municipal Improvement District,* 5 Cal. 3d 671 (1971)."

It is submitted that Judge Browning's view is sustained by the decisions of this Court. In *Gray v. Sanders,*[26] this Court asked, "How . . . can one person be given twice or ten times the voting power of another person . . .?"[27] In *Gray* the Court went on to speak of "equality among those that meet the basic qualifications".[28] In *Reynolds v. Sims,*[29] this Court thought it "inconceivable" that a state law could permit the votes of some citizens to be "multiplied by two, five or 10. . . ."[30] In *Harper v. Virginia State Board of Elections*[31] this Court held that "a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter . . . an electoral standard. Voter qualifications have no relation to wealth. . . ."[32] In *Harper* this Court went on to say that "Wealth, like race, creed, or color, is

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[26]372 U.S. 368 (1963).
[27]372 U.S. at 379.
[28]372 U.S. at 380.
[29]377 U.S. 533 (1964).
[30]377 U.S. at 562.
[31]383 U.S. 663 (1966).
[32]383 U.S. at 666.

not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race [cit. omitted] are traditionally disfavored. [Cits. omitted]. To introduce wealth . . . as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor."[33] "For to repeat, wealth . . . has, in our view, no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned".[34]

In *Kramer v. Union Free School District*,[35] this Court struck down a New York statute limiting the franchise in certain school districts to those who owned or leased real estate, or who were the parents of school children. In *Cipriano v. City of Houma*[36] and *Phoenix v. Kolodziejski*,[37] this Court struck down statutes of Louisiana and Arizona limiting the franchise in revenue and general obligation bond elections; respectively, to property owners.[38] In *Hadley v. Junior College District*,[39] this Court held that "once a State has decided to use the process of popular election and 'once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded'."[40]

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[33]383 U.S. at 668.

[34]383 U.S. at 670.

[35]395 U.S. 621 (1969).

[36]395 U.S. 701 (1969).

[37]399 U.S. 204 (1970).

[38]In *Phoenix* Mr. Justice White said, "Presumptively, when all citizens are affected in important ways by a governmental decision subject to a referendum, the Constitution does not permit weighted voting or the exclusion of otherwise qualified citizens from the franchise. . . ."

[39]397 U.S. 50 (1970).

[40]397 U.S. at 58, 59.

In *Gordon v. Lance*,[41] Mr. Chief Justice Burger stated as follows:

> "While Cipriano involved a denial of the vote, a percentage reduction of an individual's voting power in proportion to the amount of property he owned would be similarly defective. See Stewart v. Parish School Board, 310 F. Supp. 1172 (E.D. La.) aff'd, 400 U.S. 884 (1970)."[42]

Stewart, the case cited by the Chief Justice, was a three-judge court decision involving constitutionality of a Louisiana statute limiting the franchise to property owners, and providing also for weighted voting. The decision was affirmed by the Supreme Court,[43] and that affirmance has precedential value. Let us examine what was affirmed in *Stewart*:

> "By gearing the weight of each elector's vote to the amount of his assessed property the laws debase the vote of small landowners. We hold therefore that the exclusion of all non-property taxpayers and the dilution of the small property holder's vote violate the Equal Protection Clause of the Fourteenth Amendment."[44]

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> "*Kramer* and *Cipriano*, with the aid of Reynolds v. Sims, *Avery*, and *Harper*, teach that laws restricting the right to vote—*we say, in any election*—do not carry the usual presumption of constitutionality."[45]

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[41] 403 U.S. 1 (1971).
[42] 403 U.S. at .....
[43] 400 U.S. 884 (1970).
[44] 310 F.Supp. at 1173.
[45] 310 F.Supp. at 1176.

"A significant result of this reading of *Kramer* is that property qualifications *simpliciter* may no longer be acceptable eligibility tests, even in such traditional areas as school millage or sewer assessment elections. It would make no difference that a community's tax structure was such that only property owners directly paid for such proposals. The Court's concept of 'interest' will not permit the exclusion of residents who do not own property, since they share a concern for and stake in the quality of the schools the young attend and the operation of the sewers which make the city habitable."[46]

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"There are obvious differences between the case before the court and Kramer, Cipriano, and Turner. It is significant, however, that in none of the cases did the Supreme Court recognize a constitutional difference between a general election and a special-purpose election."[47]

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"The requirement that the bond issue be approved by a majority of the taxpayers voting representing a 'majority of the assessed property owned by those taxpayers who are actually voting' apparently rests on the assumption, first, that property owners have a special pecuniary interest; second, that the larger the assessment the greater the interest and the greater the need to protect large property owners from irresponsible owners having no property."[48]

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[46] *Ibid.*
[47] 310 F.Supp. at 1177.
[48] 310 F.Supp. at 1179.

"In terms of voting responsibly, there is no necessary correlation between the amount of an assessment and the degree of interest a taxpayer may have in a particular bond issue. A ten thousand dollar house to one person may mean more to that person than a hundred thousand dollar house to another.

"The actual effect of gearing assessments to the vote is simply to dilute the participation of small landowners and to exaggerate the participation of large landowners in violation of the one man, one vote canon."[49]

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"There are two constitutional issues in this case: first, the restriction of the franchise to property taxpayers; second, the requirement that the majority of the voters represent a 'majority of the assessed property'. Since the Court agrees with the plaintiffs on the first issue, it might be said that it is unnecessary to reach the second issue. But the two limitations have been inseparable since 1898. Moreover, weighting the vote in favor of the large property owner points up the unsoundness of limiting the vote to property taxpayers."[50]

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"At this point in history, this is an intolerable discrimination."[51]

It is not possible to reconcile the reasoning and result in *Stewart* with the reasoning and result of the court below in the case at bar.

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[49] *Ibid.*

[50] 310 F.Supp. at 1180.

[51] *Ibid.*

State court decisions concerning landowner qualifications and weighted voting in special districts are now in considerable confusion. This situation is pointed up by decisions in September and November from the Supreme Courts of California and Wyoming. In *Burrey v. Embarcadero Municipal Improvement District*,[53] the California Supreme Court gave short shrift to a statute limiting the franchise to landowners and giving each landowner "one vote for each one dollar ($1) in assessed valuation of land owned by him. . . ." The Court said that "the equality principle . . . is applicable when the weighted vote is based on property value . . ."[54] and found the system "inconceivable" and "extraordinary".[54]

> "In conclusion, it would be difficult to imagine a more radical variation in voting strength than results from this land value voting scheme. As Wallover, Inc. itself assets, the weighting of votes by land value has continued to guarantee that corporation well over a majority of the votes. Instead of 'one person, one vote' we have here a case of 'one corporation, 285,689 votes."[55]

The California Supreme Court in *Burrey* relied heavily on this Court's decisions in *Avery, Hadley, Reynolds, Phoenix, Harper, Kramer,* and *Cipriano.* But two months later the Supreme Court of Wyoming, decrying "a tendency for judges and courts to overreact to decisions of the United States Supreme Court", held in *Associated Enterprises, Inc. v. Toltec Watershed Im-*

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[53] 5 Cal. 3d 671, 97 Cal. Rptr. 203, 488 P.2d 395 (1971).

[54] 5 Cal. 3d at 678.

[54] *Ibid.*

[55] 5 Cal. 3d at 679. Compare the situation of the J. G. Boswell Company in the case at bar.

provement District[56] that a Wyoming statute limiting the franchise to landowners with provision for a weighting factor for acreage, was not invalid. The Court quoted with approval from a 1902 Missouri case:[57]

> "The fact that each owner is entitled to one vote for every acre of land owned by him creates no more infirmity in the law than the right of each stockholder of any corporation to cast as many votes as he owns shares of stock renders such laws invalid. In both instances the majority in interest, instead of the majority in number, controls; and who shall say such laws are not just?"[58]

The Wyoming Court also relied on a 1908 decision from Nebraska, *State ex rel. Harris v. Hanson.*[59] The essence of the *Harris* decision is as follows:

> ". . . [I]t cannot be said that the formation of the district was illegal because electors of the district owning no real estate were barred from participating therein, or because each property owner was given a vote for each acre or lot of land he owned."[60]

The interesting thing is that the Nebraska court relied on the old California case of *People ex rel. Van Loben Sels v. Reclamation District No. 551,*[61] a decision of

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[56].....Wy. ....., 490 P.2d 1069 (1971).

[57]*Mound City Land & Stock Co. v. Miller,* 170 Mo. 240, 70 S.W. 721 (1902).

[58]490 P.2d at 1072.

[59]80 Neb. 724, 115 N.W. 294, 80 Neb. 738, 117 N.W. 412 (1908).

[60]115 N.W. at 298.

[61]117 Cal. 114, 48 Pac. 1016 (1897).

dubious value in the state of its origin. The California Supreme Court in *Burrey* refers to it as one of "a series of old California cases" and says, "We need not comment upon the continuing validity of these cases; they do not govern here".[62] It is not possible to reconcile the reasoning and result in *Toltec* with the reasoning and result in *Burrey*, just as it is not possible to reconcile the reasoning and result in the case at bar with *Burrey*, *Stewart*, or this Court's decisions in *Harper*, *Hadley*, *Kramer*, *Cipriano*, and *Phoenix*.

The intermediate appellate courts in California have also wrestled with the problem. In *Schindler v. Palo Verde Irrigation District*[63] the statute concerned limited the franchise to landowners, and gave them "one vote for each $100 of assessed value of his property . . ." A small landowner sued to establish the principle of "one landowner—one vote". The California Court of Appeal for the Fourth Appellate District held that the Voting Rights Cases apply to an irrigation district.[64] But it nevertheless sustained weighted voting

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[62] 5 Cal. 3d at 677.

[63] 1 Cal. App. 3d 831, 82 Cal. Rptr. 61 (1969).

[64] "As we interpret *Kramer*, *supra*, the guidelines laid down in it must be followed in testing the constitutionality of a statutory distribution of voting rights in elections pertaining to the affairs of a governmental unit or public corporation whether it be a school district or some other limited special purpose unit. * * * We perceive no logical basis for holding that the same constitutional standards of fairness governing distribution of the election franchise for school district elections should not be applicable to elections pertaining to special entities exercising other limited governmental functions. * * * Schools as well as water service may be private or public. But when the state engages in those activities through a governmental agency and provides for citizen participation through the election process, the distribution of voting rights must meet the equal protection standards prescribed in *Kramer* and *Cipriano*." 1 Cal. App. 3d at 837.

according to the assessed value of landownership.[65] It is not likely that *Schindler* would have been sustained on appeal. No hearing was sought in the California Supreme Court; that Court in the course of the opinion in *Burrey* spoke of *Schindler* with some asperity.[66]

The intriguing thing is that the Court below has unanimously found Tulare Lake Basin Water Storage District to be a governmental unit to which the standards of the voting rights cases apply. This is implicit in the Court's order that the district be reapportioned, so that each of its eleven divisions shall reflect approximately the same number of dollars. The paradox of the decision is that the notion of equality receives the Court's support in requiring such reapportionment, while the majority suffers weighted voting to continue unabated. The majority adverts to the fact that the total assessed valuation of the land represented by plaintiff Fred Salyer in Division 4 is nearly three times greater than the total assessed valuation of the land represented by Boswell vice-president A. L. Vander-

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[65]". . . [T]he grant of franchise in proportion to the assessed value of landownership fairly distributes voting influence among those primarily and directly interested in direct proportion to the stake each has in the District." 1 Cal. App. 3d at 839.

[66]"This decision may be difficult to reconcile with the Supreme Court cases on this subject, particularly Kolodziejski which was decided after Schindler. (See Girth v. Thompson (1970) 11 Cal. App. 3d 325, 330, 89 Cal. Rptr. 823.) However, since irrigation districts are substantially different from the EMID—their powers are fewer and more limited to the particular purpose for which the districts were created—we do not reach that question here." *Burrey v. Embarcadero Municipal Improvement District*, 5 Cal. 3d 671, 682 (1971). The *Girth* case, cited with approval by the court in *Burrey*, held that the voting rights cases applied to an irrigation district and disapproved of an earlier contrary holding in *Thompson v. Board of Directors*, 247 Cal. App. 2d 387 (1967).

griff in Division 10. The majority will have none of such inequality:

> "Such malapportionment presents a classic violation of equal protection and therefore defendant is ordered to submit a plan to correct this malapportionment within six months of the date this decision becomes final."

But the majority, straining at a gnat and swallowing a camel, at the same time permits a system to continue to exist which will allow the J. G. Boswell Company to vote 37,825 times.

Conclusion.

There is no reason why the residents of Tulare Lake Basin Water Storage District should not be allowed to vote. But even if the franchise be denied them, there is no way that the fair name of equal protection can be stretched to cover §41001 of the California Water Code and its provision that "Each voter may . . . cast one vote for each one hundred dollars ($100), or fraction thereof, worth of land. . . ." Plato defined oligarchy as "government resting on a valuation of property".[67] While Article IV, Section 4 of the Constitution, guaranteeing to "every state in this Union a Republican Form of Government" has been held not to be for judicial enforcement,[68] the clause at least shows us what the Framers had in mind. Is Tulare Lake Basin Water Storage District a Republican Form of Government? Mr. Madison would doubtless be surprised to be told that it is. One suspects that he would be equally surprised that such a system should ever have been conceived in an American state, much less tolerated fifty years.

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[67]The Republic (Bakewell Ed., page 323).
[68]*Baker v. Carr*, 369 U.S. 186 (1962).

It is respectfully submitted that the questions presented by this appeal are substantial and that they are of public importance.

Dated this 5th day of May, 1972.

C. Ray Robinson,
Merced, California,

Thomas Keister Greer,
Rocky Mount, Virginia,
Counsel for Appellants.

APPENDIX A.

Memorandum and Order.

Original Filed: Nov. 13, 1970.

In the United States District Court, Eastern District of California.

Salyer Land Company, a California corporation, C. Everette Salyer; Fred Salyer; Lawrence Ellison; and Harold Shawl, Plaintiffs, vs. Tulare Lake Basin Water Storage District, a public district, Defendant. Civil No. F-414.

Defendant's moton to dismiss was submitted on briefs without argument; C. Ray Robinson and Thomas Keister Greer, appearing for plaintiffs; and Ernest M. Clark and Robert M. Newell, appearing for defendant.

Plaintiffs' action is authorized by Section 1983 of Title 42 of U. S. Code, and alleges that plaintiffs are being denied constitutional rights under color of State law, particularly sections 41000 and 41001 of the Water Code of California which permits only landowners to vote, and gives them one vote for each $100 worth of land.

Plaintiffs complaint presents a substantial constitutional question as to whether the sections of the California Water Code are in conflict with the United States Constitution.

Therefore, defendant's motion to dismiss is denied and a three-judge court is ordered convened pursuant to 28 U.S.C. § 2284.

DATED: November 13, 1970.

M. D. CROCKER
United States District Judge

Memorandum and Order.

Original Filed: February 17, 1972.

In the United States District Court, Eastern District of California.

Salyer Land Company, a California corporation, C. Everette Salyer, Fred Salyer, Lawrence Ellison, and Harold Shawl, Plaintiffs, vs. Tulare Lake Basin Water Storage District, a public district, Defendant. No. F-414 Civ.

This court has jurisdiction under section 1343 of Title 28 and section 1983 of Title 42 of the United States Code, and a three-judge court has been convened pursuant to section 2284 of Title 28 of the United States Code.

The case was submitted on factual statements of the parties and briefs, without testimony or oral argument. Plaintiffs were represented by C. Ray Robinson, Esq., and Thomas Keister Greer, Esq.; defendant was represented by Robert M. Newell, Esq., and Ernest M. Clark, Jr., Esq.

Plaintiffs are landowners or resident registered voters within the area covered by defendant, Tulare Lake Basin Water Storage District, which was organized pursuant to California law.

In this action, plaintiffs contend that California Water Code §§ 41000 and 41001[1] are unconstitutional

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[1] § 41000. *Qualification.* Only the holders of title to land are entitled to vote at a general election.

§ 41001. *Vote in precinct; number of votes.* Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars ($100), or fraction thereof, worth of his land, exclusive of improvements, minerals, and mineral rights therein, in the precinct.

in that they deny plaintiffs the equal protection of the law guaranteed by the fourteenth amendment of the Constitution of the United States in that they permit only landowners to vote and give them one vote for each $100 of assessed valuation. Thus non-landowners cannot vote, and the small landowners get fewer votes than the large landowners.

Plaintiffs seek an order of this court enjoining defendant from giving effect to these sections and requiring defendant to submit a plan whereby all residents be permitted only one vote regardless of land-ownership.

At the outset, defendant asks this court to abstain from rendering a decision, but abstention is not proper in this case as the California Supreme Court has already upheld the constitutionality of these two sections.

Defendant is a water storage district organized in 1926 under California law which limits its activities to the development and improvement of the water supply within the district, thus benefiting the land which alone bears the cost.

It performs no governmental functions of general concern to the populace and provides no service to the general public such as found by the court in *Burrey v. Embarcadero Municipal Improvement District* recently decided by the Supreme Court of California.

The State of California has a compelling interest in the development of its water resources, and limiting the vote to landowners is necessary to further this state interest because it is doubtful if the District would have been formed unless the persons paying the expenses could control them.

While it is true that the activities of the District affect the economy of the area which is of interest to

residents that are not landowners, this is an indirect interest and not a direct, primary and substantial interest that would entitle them to vote. Thus limiting the vote to landowners in this particular water district does not violate plaintiffs' constitutional rights, and the "one man, one vote" cases cited by plaintiffs are not controlling in this special purpose district.

Section 41001 providing one vote for each $100 of assessed valuation is not unconstitutional as the benefits and burdens to each landowner in the District are in proportion to the assessed value of the land, so permitting voting in the same proportion fairly distributes the voting influence.

The remaining issue in this case is the malapportionment of the divisions that is alleged in paragraph XII of the complaint. Plaintiffs pray that the District be required to submit a plan for holding all elections at large.

Defendant argues that sections 43730 and 41550 of the California Water Code provide adequate State remedies, that the remedy is not within the Civil Rights Act, and that if it is, this court should abstain due to the adequate State remedies.

California Water Code §§ 43730 and 41550 do not provide an adequate State remedy for malapportionment. Section 43730 pertains to improper board action and 41550 provides a means of forcing the board to hold an election. Section 41152 provided the redivisioning remedy which plaintiffs seek, but was repealed in September 1969. From that date to the present, there has been no adequate State remedy.

Section 39777 will not grant relief as it merely requires initial segregation in divisions "possessing the

same general character of water rights or interests in the water of a common source." Nor does section 41153 help, as it merely contemplates that the board may make a redivision order; however, there is no mandatory requirement present.

Where there is no State remedy and a Civil Rights violation occurs, 42 U.S.C. 1983 has been interpreted "to provide a remedy. . . ." [*McNeese v. Board of Education*, 373 U.S. 668, 672 (1963)].

Here we have divisions created by a state engineer (approved) acting under state law, and these divisions have been maintained by the Board of Directors also purporting to act under state law. This action is within 42 U.S.C. 1983. [See, *Monroe v. Pape*, 365 U.S. 167 (1961)].

The present divisions have not been redivisioned for 40 years. Total assessed valuation of the land in Division 4 is nearly three times greater than the total assessed valuation of Division 10 (Division 4—$1,954,547; Division 10—$688,425). The result is that $100 of assessed valuation in Division 10 has almost three times the voting power of $100 of assessed valuation in Division 4. In addition, Division 4 has 110 separate landowners, whereas Division 10 has only 4. Each Division is entitled to one director on the District's Board of Directors. Consequently, the 110 landowners in Division 4 have only one-third the representation on the Board when compared to Division 10.

Such malapportionment presents a classic violation of equal protection and therefore defendant is ordered to submit a plan to correct this malapportionment within six months of the date this decision becomes final.

If defendant is unable to redivision the district into divisions which are reasonably equal in assessed valuation and also possess the same general character of water rights or interest in the water of a common source as required by section 39777 of the California Water Code, the plan may provide for elections at large.

Dated: February 17, 1972.

/s/ M. D. Crocker
United States District Judge
Robert H. Schnacke
United States District Judge

Salyer Land Company v. Tulare Lake Basin Water Storage District No. F-414 Civil.

Original filed Feb. 17, 1972.

BROWNING, Circuit Judge, concurring in part, dissenting in part:

Defendant asks this court to abstain from rendering a decision with respect to California Water Code §§ 41000[1] and 41001.[2] "But the abstention rule only applies where 'the issue of state law is uncertain'" *Wisconsin v. Constantineau,* 400 U.S. 433, 438 (1971), and here the meaning of the challenged state statutes is clear.

Turning to the merits, it is clear at the outset that the Equal Protection Clause applies not only to the challenged statutes but also to their implementation by the defendant district. "The Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the State." *Avery v. Midland County,* 390 U.S. 474, 479 (1968). Defendant and similar entities "are but the agents or representatives of the state in the particular locality in which they exist. They are organized for the purpose of carrying out the purposes of the legislature in its desire to provide for the general welfare of the state." *In re Madera Irrigation District,* 92 Cal. 296, 317, 28 Pac. 272, 276 (1891). *See Girth v. Thompson,* 11 Cal.App.2d 325, 328 (1970).[3]

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[1]See majority opinion at note 1.

[2]See majority opinion at note 1.

[3]California Water Code § 39059 declares that the powers conferred upon the board of directors of a water storage district "are police and regulatory powers and are necessary to the accomplishment of a purpose that is indispensable to the public interest." Section 39061 declares that use of water in a water stor-

(This footnote is continued on next page)

To evaluate the constitutionality of the challenged voting rules, the purpose and effect of the rules must be examined in the context of the district's activity. "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interest which the State claims to be protecting, and the interests of those who are disadvantaged by the classifications." *Williams v. Rhodes*, 393 U.S. 23, 30 (1968) quoted in *Kramer v. Union Free School District*, 395 U.S. 621, 626 (1969).

I.

Exclusion of persons from the vote must be "carefully scrutinized," and can be sustained only if "necessary to promote a compelling state interest." *Kramer v.*

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age district, and of facilities and property to carry out the district's functions under the statute, "is a public use."

Water storage districts are governed by California Water Code §§ 39000-48401. The Board of each district has "all power and authority necessary to enable it to fully perform the duties imposed upon it. . . ." § 43150, *see generally* §§ 4300-44000. This includes the power to employ and discharge persons on a regular staff and to contract for the construction of district projects. § 43152.

The district can initiate projects and supervise their completion. §§ 42200-42750. It can condemn private property for use in such projects. §§ 43530-43533. It may cooperate with and contract with other agencies, state and federal. § 43151.

The district can authorize general obligations bonds and interest-bearing warrants. *See* §§ 44900-45900. It can also impose tolls or other charges on the use of its water, irrigation mechanisms, and other services and facilities. It can levy "assessments" up to $2.50 per acre for organizational expenses and costs incurred in undertaking specific projects; for all other purposes, assessments are prorated to the extent of benefit conferred by the district project. *See* §§46000-47900.

Union Free School District, supra, 395 U.S. at 627.[4] It cannot be sustained unless "those excluded are in fact substantially less interested or affected than those the statute includes." *Id.* at 632.[5] Thus the interest of the state in confining the franchise to owners of land in the district must be weighed against the interest of those said to be disadvantaged by this classification, namely, lessees of such property and non-landowning district residents.

After review, it appears that there is compelling reason for disenfranchisement of non-owner, non-lessee residents of the district, but not, contrary to the majority's holding, for the exclusion of lessees of district land.

The relevant facts may be briefly summarized.

Much of California's agricultural land suffers from too little water or, intermittently, from too much. Conservation, distribution, and control of the water supply are major state concerns.[6] The California Legislature has authorized a wide variety of special instrumentalities, including water storage districts, to provide a flexible response to water problems on a local basis. These special purpose agencies are credited with "vast-

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[4]*See also* Cipriano v. City of Houma, 395 U.S. 701, 704 (1969).

[5]*See also* Cipriano v. City of Houma, *supra,* 395 U.S. at 704. Phoenix v. Kolodziejski, 399 U.S. 204, 207, 212-213 (1970).

[6]*See, e.g.,* California State Constitution, Article XIV, § 3; California Water Code §§ 100, 104, 105. *See* note 2.

ly expanding water distribution facilities" in the state. Rogers & Nichols, Water for California, Vol. 2, § 448, at 35.

The defendant water storage district consists of 193,000 acres of intensively cultivated, highly fertile farm land. The district is sparsely populated—only 78 persons, including 18 children, live within its boundaries. This is said to be typical of such districts because the lands are agricultural, and because they are commonly arid, subject to flooding,[7] or both. Nearly 85 per cent of the land in the district is farmed by four corporations. The residents of the district are all employees, or members of employees' families, of one or another of the four farming corporations. Only two residents are landowners; not directly, but through ownership of a corporation that farms about 16 per cent of the district's land.

Landowners have a direct and substantial interest in the efficient and effective management of the district. In keeping with the purpose of water storage districts, defendant district is authorized to plan and execute projects "for the acquisition, appropriation, diversion, storage, conservation, and distribution of water." Calif. Water Code § 42200.[8] Defendant district has adopted and executed three such projects since its formation in 1924. These projects involved the purchase and stor-

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[7]Nearly half of the land in the defendant district was flooded in 1969. One third of the district still remains under water.

[8]The plans may also include "any drainage or reclamation works connected therewith, and the generation of hydroelectric energy incident thereto, and to sale and distribution thereof. . . ." By the express terms of the statute, however, these additional powers may be used only in connection with and incidental to a plan to acquire, divert, store, conserve, and distribute water in the district. There is no evidence that the defendant district engaged in the generation, sale, or distribution of electric power.

age of water for irrigation of lands within the district and the construction of a water delivery system. Each project required a multi-million dollar expenditure. In accordance with the statute (Calif. Water Code § 46176), the costs were assessed upon the lands of the district in proportion to benefits received by each tract.

The economic burden from district projects *cannot* fall on non-owner, non-lessee residents. There are no forms of non-property oriented taxes, assessments, or other means through which district costs could be spread to others. *Cf. Cipriano v. City of Houma,* 395 U.S. 701, 705 (1969); *Phoenix v. Kolodziejski,* 399 U.S. 204, 209-10 (1970).

The district performs no governmental function and provides no service of direct concern to residents of the district. *Cf. Phoenix v. Kolodziejski,* 399 U.S. at 206, 209. Its activities relate solely to the storage and distribution of water for use in farming the land.[9] These functions and services would not differ at all if no one lived in the district. The district has nothing to do with furnishing police and fire protection, schools, roads, and other governmental services and facilities usually provided to residents of an area. For that reason, people who happen to reside within the physical boundaries of the district are not constituents of the officers or board of directors of the district in any real sense.

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[9]Plaintiffs argue that defendant district has the power to, and does, engage in flood control activities, and that these are obviously of interest to residents of the district. The power of the district in this respect is disputed, but any such power the district might possess would be limited to flood control connected with and incident to the exercise of the district's primary functions of water storage and distribution.

As employees of the farming corporations, residents of the district have an interest in the success of the farm operation and, hence, in the activities of the district that contribute to the success of those operations But this interest is no different in kind or degree from the interest of other employees of the farming corporations who do not reside in the district, and is little different from the interest of non-resident suppliers and others whose economic well-being may be linked to the success of the district's farming operations. If residents are constitutionally entitled to vote in district elections because of their interest as employees, so too are non-resident employees and, perhaps, all other economically affected non-residents.

Against this factual background, it is possible to evaluate the state's interest in limiting the franchise and the impact of the limitation upon disenfranchised lessees and residents.

The state's interest in the management of its water resources, and, therefore, in the creation and effective operation of water storage districts and similar agencies, is obviously a vital one. Limitation of the franchise to whose who own or lease district land is necessary to further this compelling state interest for two reasons.

First, the limitation is necessary to induce landowners to join in the creation of such districts. It is inconceivable that the non-resident owners, controlling 85 per cent of the land in the defendant district, would have agreed to formation of the district or its continued existence had they been denied control over the selection and implementation of the multi-million dollar district projects designed solely to benefit the lands of the district and to be paid for entirely by assessment

upon those lands. *See Schindler v. Palo Verde Irrigation District,* 1 Cal.App.3d 831, 839, 82 Cal. Rptr. 61 (1969).[10] It is also unlikely that non-resident landowners would have participated had landowner control been subject to unpredictable dilution or deliberate manipulation[11] by the votes of residents having only a remote interest in the district's operations.

In the second place, in view of the nature of the issues to be voted upon, the exclusion of non-owner, non-lessee residents from the franchise in a water storage district is dictated by the state's interest in obtaining intelligent and responsible decisions as to the most effective water development program for the lands of the respective districts.[12]

Turning to those who are assertedly disadvantaged, it is evident from the foregoing discussion that the interest of residents who neither own nor lease property within the district is substantially less significant than that of the owners, and is both remote and indirect. Their exclusion from district elections can have only a

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[10]There are, in fact, "unique problems that make it necessary to limit the vote. . . ." Phoenix v. Kolodziejski, 399 U.S. 204, 213 (1970). We are told that some California water storage districts have no residents, or only a nominal number. Unless ownership of an interest in the district's land were a permissible basis for the franchise, such districts could not function at all.

A similar problem faces reclamation districts organized under Division 15 of the California Water Code. Voting in these districts is also limited to property owners. *See* § 50704. There are no residents on seven such reclamation districts totaling 88,654 acres that are located within the boundaries of defendant water district.

[11]Sixty-six of the 78 persons now reported to reside in the district are employees of the corporate farms living on the corporation's land.

[12]Oregon v. Mitchell, 400 U.S. 112, 242 (1971) (opinion of Brennan, White, and Marshall, JJ); Lassiter v. Northampton Elections Bd., 360 U.S. 45, 51 (1959).

minimal impact upon them, and is amply justified by the compelling state interest.

Contrary to the majority's view, however, this is not true of the exclusion of those who lease lands in the district for farming. This group's interest in the district's projects to increase the water available for farming and to improve its distribution is indistinguishable from the interest of the owners. They are also equally interested in the cost of the district's projects, for this expense will be passed on to them by express agreement or in the form of increased rentals. *See, e.g., Phoenix v. Kolodziejski, supra,* 399 U.S. 204, 210-11.[18] And obviously the state's interest in intelligent and responsible decisions regarding the district's water management program is not advanced by excluding those who actually farm the land.

The only substantial question is whether lessees must be excluded to induce landowner participation. Nothing in the record supports an affirmative answer; and the contrary is strongly suggested by the fact that the four corporations that farm 85 per cent of the district's land are major lessees of land as well as the largest landowners.

Thus, excluding non-owner, non-lessee residents advances the state's overall interest in intelligent and effective water resources development by encouraging the formation of water storage districts and by helping assure informed and interested voters in district elections.

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[18]Defendant suggests that the lessees might obtain a provision in the lease for a proxy from the lessor as allowed by § 41002. If a statute otherwise infringes upon the Equal Protection Clause, the infringement of constitutional rights is not ameliorated by a possibility that relief might be obtained through private contracts.

II

Since ownership of a property interest in district land may be required as a qualification for voting in water storage district elections, it might seem to follow that it would also be permissible to weight the votes in proportion to the value of the voter's land, as the majority holds. *See Schindler v. Palo Verde Irrigation District, supra,* 1 Cal.App.3d at 839. Brief consideration demonstrates, however, that this is not so.

In a wide variety of contexts the Supreme Court has emphasized that where an election concerns the exercise of important governmental powers having a substantial impact upon all members of the particular electorate, as here, the state is required to insure that the vote of every member of the electorate counts the same, so far as practicable, as that of every other member of the electorate.[14] In *Hadley v. Junior College District,* 397 U.S. 50, 58-59 (1970), Mr. Justice Black summarized the Supreme Court's position in language applicable to this case:

> "[A] State may, in certain cases, limit the right to vote to a particular group or class of people. As we said before, '[v]iable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent ex-

[14]Avery v. Midland County, 390 U.S. 474, 485 (1968); Swann v. Adams, 385 U.S. 440 (1967); Lucas v. Colorado Gen. Assembly, 377 U.S. 713 (1964); Burns v. Richardson, 384 U.S. 73 (1966); Roman v. Sincock, 377 U.S. 695 (1964); Davis v. Mann, 377 U.S. 678 (1964); Maryland Committee v. Tawes, 377 U.S. 656 (1964); WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964); Reynolds v. Sims, 377 U.S. 533, 562 (1964); Wesbury v. Sanders, 376 U.S. 1, 7-8 (1964); Gray v. Sanders, 372 U.S. 368, 379-80 (1963).

perimentation.' [Sailors v. Board of Education, v. Board of Education, 387 U.S. 105, 110-11 (1967)] *But once a State has decided to use the process of popular election and 'once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded.'* Gray v. Sanders, 372 U.S. 368, 381 (1963)" (emphasis added).

Cf. id. at 56. As Justice White said in *Phoenix v. Kolodziejski, supra,* 399 U.S. at 209, "Presumptively, when all citizens are affected in important ways by a governmental decision subject to a referendum, *the Constitution does not permit weighted voting* or the exclusion of otherwise qualified citizens from the franchise. . . . Placing such power in property owners alone can be justified only by some overriding interest of the owners that the State is entitled to recognize" (emphasis added).

Defendant has identified no compelling state interest in weighted voting in water storage district elections.

The statute itself weakens the contention that landowners would decline to participate in the formation of a water storage district if each vote weighed equally. A majority of the *number* of landowners is normally required to form such a district (Calif. Water Code § 39400),[15] and a majority of the *number* of landowners voting is required to approve a district project. Calif. Water Code § 42550.

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[15]The alternative is "not less than 500 petitioners, each of whom is the holder of title to land therein and which petitioners include the holders of title to not less than 10 percent in value of the land included within the proposed district." § 39400.

Neither can it be said that the state's interest in intelligent and responsible elections is served by weighted voting. There is nothing in the record to support the assumption that a small landowner is less likely than a large one to possess the information and understanding of water development problems that is requisite to intelligent and responsible voting on the affairs of a water storage district. *Cf. Harper v. Virginia Board of Elections*, 383 U.S. 663, 668 (1966). And the landowner's interest in finding and implementing solutions to those problems is no less acute because his operation is small. Efficient production from his smaller acreage may be of greater economic consequence to him; and the lesser absolute share of the cost of district projects he may[16] be required to bear may impose a greater burden. As Judge Wisdom said in a related context, "In terms of voting responsibility, there is no necessary correlation between the amount of any assessment and the degree of interest a taxpayer may have in a particular bond issue. A ten thousand dollar house to one person may mean more to that person than a hundred thousand dollar house to another." *Stewart v. Parish School Board of Parish of St. Charles*, 310 F. Supp. 1172, 1179 (E.D. La. 1970), *aff'd* 400 U.S. 884 (1970). *See also Burry v. Embarcadero Municipal Improvement District*, 5 Cal.3d 671 (1971).

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[16]Project costs are distributed in proportion to the benefit conferred upon the particular tract rather than in proportion to the tract's value or size. California Water Code § 46176.

III

The order of the California Department of Water Resources approving the formation of the defendant district divided the district into eleven divisions for election of directors to the district's board.[17]

Each division elects one director, but the number of landowners in the divisions varies from 110 in division four to four in division ten.[18] While the record does not show the number of lessees in each division, there is no reason to believe that the gross malapportionment among the divisions will be corrected merely by including lessees among those qualified to vote.

Such malapportionment does indeed present a classic violation of equal protection. *See Reynolds v. Sims*, 377 U.S. 533, 562-63 & n.40 (1964). As Mr. Justice Black said in *Hadley, supra*, after finding that important governmental functions were involved having sufficient impact throughout the constitutency, "when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal number of voters can vote for proportionally equal numbers of officials." 397 U.S. at 56.

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[17]California Water Code § 39777 reads:

> "*Division of district.* The order on final hearing shall also divide the proposed district into five, seven, nine, or eleven divisions so as to segregate into separate divisions lands possessing the same general character of water rights or interests in the water of a common source. The divisions shall be numbered first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, or eleventh, according to the number of the division."

[18]Even were the weighted voting practices of the district valid, the malapportionment would be substantial. The assessed value of the land in division four is $1,954,547, while that of division ten is $688,425.

It is suggested that the apportionment reflects compliance with the statutory directive that division lines be drawn "so as to segregate into separate divisions lands possessing the same general character of water rights." *See* note 17. It is unnecessary to consider whether this would justify the result, if true. The record is clear that the divisional lines were not drawn on this basis.[19] The record also demonstrates that the statutory directive is irrelevant to the drawing of division lines in the defendant district for all water rights in the district are of the same character.[20]

Finally, defendant seems to imply that the malapportionment of divisions does not involve state action subject to the Equal Protection Clause. But as noted earlier, the present divisions were approved by the California Department of Water Resources as required by the

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[19]A "Report on Feasibility of Proposed Tulare Lake Basin Water Storage District," submitted to the California District Securities Commission as an exhibit to defendant district's Amended Report and Estimate of Cost for Project 1, states at pages 73-74:

> "The proposed divisions follow generally the lines of existing reclamation districts. It is also understood that they are adjusted to give the balance of representation desired by the parties to the agreement. . . ."

[20]Plaintiffs' factual statement, which defendant accepted without response, states:

> "The water rights of Tulare Lake Basin Water Storage District, for example, its water right in the Kings River as stated in the Kings River Schedule, and its water right derived from its contract with the state of California, are for the equal benefit of the lands in the District. That is to say, there are no gradations or priorities within the District as to District water."

The following appears in defendant's Amended Report and Estimate of Cost for Project 1 (see note 19):

> "That is to say, all waters—whatever that quantity may be —acquired by or under control of the District, are to be *prorated equally over the acreage* in that District. Or, in other words, all things being equal, every acre of land within the boundaries of your District will be equally benefited by your project." (Emphasis in original.)

statute (see note 17), and "the prohibitions of the Fourteenth Amendment extend to 'all actions of the State denying equal protection of the laws' whatever the agency of the State taking the action. . . ." *Cooper v. Aaron*, 358 U.S. 1, 17 (1958). *See also Avery v. Midland County, supra*, 390 U.S. 474, 479-80.

/s/ James R. Browning
Circuit Judge

APPENDIX B.

Notice of Appeal to the Supreme Court of the United States.

Original Filed: March 14, 1972.

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United States District Court, Eastern District of California, Southern Division.

Salyer Land Company, a California corporation, C. Everette Salyer; Fred Salyer; Lawrence Ellison; and Harold Shawl, Plaintiffs, vs. Tulare Lake Basin Water Storage District, a public district, Defendant. Civil No. F-414.

NOTICE IS HEREBY GIVEN that Salyer Land Company, C. Everette Salyer, Fred Salyer, Lawrence Ellison and Harold Shawl, plaintiffs above-named, hereby appeal to the Supreme Court of the United States from that part of the judgment entered March 10, 1972 which denies an injunction restraining the enforcement, operation and execution of Sections 41000 and 41001 of the California Water Storage District Law.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

Dated this 14th day of March, 1972.

C. RAY ROBINSON
THOMAS KEISTER GREER
By /s/ T. Keister Greer
Counsel for Plaintiffs

Certificate of Service

I hereby certify, pursuant to Rule 33 of the Rules of the Supreme Court of the United States, as amended, that I am a member of the Bar of the Supreme Court of the United States, and that on this 14th day of March, 1972, copies of the foregoing notice of appeal were deposited in a United States post office, with first class postage prepaid, addressed to counsel of record for the defendant and the amici curiae at their post office addresses, that is to say, to Ernest M. Clark, Esq., Donnelly, Clark, Chase & Haakh, 600 South Spring Street, Los Angeles, California, to Robert M. Newell, Esq., Newell and Chester, 650 South Grand Avenue, Suite 500, Los Angeles, California, to Denslow Green, Esq., 219 South D Street, Madera, California, and to George Bayse, Esq., 1007-7th Street, Suite 500, Sacramento, California. I further certify that all parties required to be served have been served.

/s/ T. Keister Greer
Thomas Keister Greer

APPENDIX C.

Bulletin No. 155, Department of Water Resources, State of California, "General Comparison of California Water District Acts" pp. 103-105 (1965):

"WATER STORAGE DISTRICTS

1 Citation	Water Code, Div. 14 comprising Secs. 39000-48401 (derived from 1921:914:1727, D. A. 9126). "California Water Storage District Law".
2 Purposes	Storage and distribution of water; drainage and reclamation in connection therewith; generation and distribution of power incidental thereto (Secs. 42200, 43000, 43025); such uses are a public use (Sec. 39061).
3 Territory	Lands already irrigated or susceptible of irrigation from a common source and by same system; need not be contiguous (Secs. 39400-39402).
4 Overlap	May include land in other agencies including other water storage districts having different plans, purposes, and objects (Sec. 39401).
5 Pet'rs.	Majority of holders of title or evidence of title representing majority in value of lands, or 500 holders of 10% in value (Sec. 39400); cost bond required (Sec. 39428).
6 Pet. to	Department of Water Resources (Sec. 39430).
7 Procedure	Petition to, and investigation, hearing and order by Dept. of Water Resources, election (majority vote) (Secs. 39400-40103).

8 Voting	1 vote for each $100, or fraction, assessed value of land exclusive of improvements, minerals, and mineral rights; proxy vote allowed (Secs. 41000-41002).
9 Records	Order following hearing on petition and formation, project abandonment, exclusion, and inclusion orders: County Recorder of each county where lands located (Secs. 39779, 40101, 42359, 48081, 48229, 48258); formation, inclusion, and exclusion records: Secretary of State (Secs. 40104, 40659, 48300).
10 Gov. Code Sec. 54900	Not applicable—assessments not on ad valorem basis.
11 Gov. Bd.	5, 7, 9, or 11 Directors, depending on number of divisions (Secs. 39777, 39928).
12 Eminent Domain	All property necessary for projects of district; private property devoted to use of other districts, cities, or counties may not be taken (Sec. 43530); may not condemn in another county without approval of board of supervisors of affected county (Sec. 43532.5).
13 State and Fed. Coop.	May cooperate and contract with the State and the U.S. under any laws of the State or the Fed. reclamation laws (Secs. 44000-44105); may enter into any agreement appertaining to or beneficial to dist. project (Sec. 43151).
14 Debt Seg.	See "Assessments".

15 Bonds	General obligation, by majority of votes cast by assessed voters (Secs. 45100, 45270, 45400); but see Secs. 42330, 41000 re vote required on adoption of projects and at general elections. General obligation bonds without election upon ⅔ vote of district board and approved by the department or (after July 1, 1965) the Calif. Dists. Sec. Com., if project or contract approved at election and assessments outstanding (Sec. 45102). Unpaid warrants draw interest (Sec. 44626). May issue interest-bearing warrants payable at a future time, the total amount payable in any year not to exceed ¼ of 1% of assessed valuation of land unless approved by the department or (after July 1, 1965) the Calif. Dists. Sec. Commission, and may not extend over 5 years unless approved by majority vote at an election (Secs. 44900-44911); may issue direct assessment warrants by ⅔ vote of board and approval of the department or (after July 1, 1965) the Calif. Dists. Sec. Com. to finance project or contract approved at an election (Secs. 45900, 46381).
16 Revenues	Tolls and charges for use of water, irrigation, and other services (Secs. 43006, 43007, 47180); power revenues (Secs. 43025, 43026, 47700, 47701); sales of surplus property, water and power (Secs. 43507, 43533, 43555, 43001, 43026); leases (Sec. 43506).

17	Assessments	Assessments for organization and other preliminary expenses equally upon each acre up to $2; additional preliminary assessments up to $2.50 for new projects (Secs. 46000-46009); for all other purposes, assessments of lands according to benefits; may be payable in installments (Secs. 46150-47701, 44030-44032); interim project assessments on each acre, up to $2 per acre (Secs. 46375-46381).
18	Tax. of Dist. Prop.	Dist. works, including reservoirs, dams, rights of way, canals, power plants, transmission lines, etc., not taxable for state, county or city purposes (Sec. 43508).
19	Districts Sec. Com.	Financial supervision and bond certification approval under Dists. Sec. Com. Law if requested (Secs. 44911, 45100, 45101 (operative until July 1, 1965), 45701; Water Code, Sec. 20003); after July 1, 1965, bonds may be issued unless certified (Sec. 45100); keep records (Sec. 43159). After July 1, 1965, perform following duties now exercised by the Dept. of Water Resources: Supervise levy of assessments (Secs. 46000-46381), see that assessments are levied (Sec. 40382), appoint assessment commissioners (Secs. 42355, 46150, 46355, 47551) and issue warrants for their compensation (Secs. 44600, 46154), appoint tax adjustment board (Sec. 46225), supervise au-

thorization and construction of works (Secs. 42200-42752, 44005, 46150), approve purchases in excess of $500,000 (Sec. 43503), examine progress reports and financial statements and make recommendations thereon (Sec. 44430), examine district affairs and make reports (Sec. 44431), prescribe form of district reports and accounts (Sec. 44432), approve issuance of district warrants payable at future times (Sec. 44904), approve issuance of bonds without an election (Sec. 45102), approve direct assessment warrants (Sec. 45900), approve preliminary assessments in excess of 50¢ (Sec. 46008), approve interim project assessments (Sec. 46377).

20 Dept. of Wat. Res.

Receive petitions for formation, investigate, hold elections and supervise organization of new districts (Secs. 39400-40103); give information and make preliminary investigations (Secs. 39081-39082); keep records (Sec. 43159); execute warrants (Secs. 39603, 44600); investigate under Dists. Sec. Com. Law (see "Districts Sec. Com."); fill board vacancies (Sec. 40500); appoint directors where election not required (Sec. 41307). Until July 1, 1965, redivide districts (Sec. 41152); supervise exclusions (Secs. 48000-48087) and inclusions (Secs. 48200-48260); see also "Districts Sec. Com." After July 1, 1965, upon re-

		quest of Calif. Dists. Sec. Com., investigate and report on feasibility of district projects or their abandonment (Secs. 42300, 42500).
21	Inclusion Exclusion	Inclusion (adjacent lands, irrigable from dist. works, if for best interest or district): by petition, hearing, order of the board, and election if sufficient protests made (Secs. 48200-48260); land may be subject to prior capital assessments (Sec. 47550). Exclusion (lands not benefited or if for best interests of district): by petition, hearing, and order of the board (Secs. 48000-48087). Consolidation provided (Sec. 48350).
22	Dissolution	Same as for irrigation districts (Sec. 48400); also dissolved by failure to file report on plans within 10 years (Dept. of Water Resources or, after July 1, 1965, the Calif. Dists. Sec. Com. may extend time 15 years) or by abandonment of plans or failure of voters to approve plans (Secs. 42280, 42360, 42552).
23	No.	9."

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TABLE OF AUTHORITIES CITED

IN THE

Supreme Court of the United States

October Term, 1971
No. 71-1456

SALYER LAND COMPANY, a California corporation, C. EVERETTE SALYER; FRED SALYER; LAWRENCE ELLISON; and HAROLD SHAWL,

Appellants,

vs.

TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district,

Appellee.

On Appeal From the United States District Court for the Eastern District of California.

MOTION TO AFFIRM.

Motion of Appellee Tulare Lake Basin Water Storage District, Pursuant to Rule 16 1.(e), to Affirm the Judgment From Which an Appeal Has Been Taken.

Appellants have appealed from that part of the judgment entered March 10, 1972, which denies an injunction restraining the enforcement, operation and execution of Sections 41000 and 41001 of the California Water Storage District Law.[1]

[1]See Notice of Appeal filed March 14, 1972, which is printed at page 21 of the Jurisdictional Statement of Appellants.

Appellee Tulare Lake Basin Water Storage District moves the Court to affirm the judgment below on the ground that it is manifest that the questions on which the decision of the cause on appeal depends are so unsubstantial as not to need further argument.

Nature of the Case.

The Appellants challenge the constitutionality of those sections of the Water Code of California which limit the right to vote in a general election of a water storage district to holders of title to land, and further, provide that each voter may cast one vote for each one hundred dollars ($100) worth of land. They assert that such a limitation is contrary to the thrust of the one-man, one-vote decisions of this Court.

On the other hand, it is the Appellee's position that, under California law, a water storage district is a limited-purpose district formed to improve the beneficial use of water. Section 39061 of the Water Code of the State of California describes the nature of a water storage district as:

> "The districts formed pursuant to this division are of the nature of irrigation, reclamation, or drainage districts in respect to all matters contemplated in the provisions of the Constitution of the State of California relating to irrigation, reclamation or drainage."

As such, a water storage district is concerned only with the beneficial development of water for agricultural purposes. This is in furtherance of "a compelling state interest." Furthermore, the district does not possess nor exercise any general powers of government as to which, it may be said, all citizens have a direct and primary

interest. Rather, its functions are limited to the development and improvement of the water supply within the district. This is for the benefit of the lands within the district which alone bear the cost of the district's projects. Therefore, it is proper and appropriate that the legislature of the State of California limited the right to vote in district general elections to holders of title to land.

The Statutes Involved on This Appeal.

Sections 41000 and 41001 of the California Water Storage District Law (Water Code, Sections 41000 and 41001) are as follows:

> "Section 41000. Qualification. Only the holders of title to land are entitled to vote at a general election."
>
> "Section 41001. Vote in precinct; number of votes. Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars ($100), or fraction thereof, worth of land, exclusive of improvements, minerals, and mineral rights therein, in the precinct."

The Decision of the Trial Court.

With respect to California Water Code, Section 41000, the trial court said:

> "While it is true that the activities of the District affect the economy of the area which is of interest to residents that are not landowners, this is an indirect interest and not a direct, primary and substantial interest that would entitle them to vote. Thus limiting the vote to landowners in this particular water district does not violate plaintiffs'

constitutional rights, and the 'one man, one vote' cases cited by plaintiffs are not controlling in this special purpose district."

With respect to California Water Code, Section 41001, the trial court said:

> "Section 41001 providing one vote for each $100 of assessed valuation is not unconstitutional as the benefits and burdens to each landowner in the District are in proportion to the assessed value of the land, so permitting voting in the same proportion fairly distributes the voting influence."

The Arguments of Appellants Are so Unsubstantial as Not to Need Further Argument.

Appellants seek to avoid the decision of the trial court by citing "one man, one vote" cases of the type determined by the trial court to be not applicable to this case.[2] Each of these cases involved situations where voters, having a direct and substantial interest in a governmental process, were denied the opportunity to participate. Such denial is clearly unconstitutional. This is not the situation before the Court.

A water storage district limits its activities to the development and improvement of the water supply within the district. It operates through the implementation of a District Project, which in turn can be enacted only by approval of a majority of all of the votes cast *and* a

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[2]*Stewart v. Parish School Board*, 310 F. Supp. 1172, aff'd, 400 U.S. 884 (1970); *Gray v. Sanders*, 372 U.S. 368 (1963); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966); *Kramer v. Union Free School District*, 395 U.S. 621; *Cipriano v. City of Houma*, 395 U.S. 701 (1969); *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970); *Hadley v. Junior College District*, 397 U.S. 50 (1970); *Gordon v. Lance*, 403 U.S. 1 (1971).

majority of the qualified voters voting at a special election to approve a District Project (California Water Code, Section 42355). Furthermore, a district project must be approved as to economic feasibility by the District Securities Commission of the State of California (California Water Code, Section 42500 (E)). The cost of any district project is borne by the lands within the district assessed upon the basis of benefits conferred in the land as determined by an outside board of assessment commissioners (California Water Code, Section 46150, 46175 (E)).

Therefore, it can readily be seen why the trial court determined that the district ". . . performs no governmental function of general concern to the populace and provides no service to the general public such as found by the Court in *Burrey v. Embarcadero Municipal Improvement District* [5 Cal.3d 671] recently decided by the Supreme Court of California."

The Trial Court further stated: "The State of California has a compelling interest in the development of its water resources, and limiting the vote to landowners is necessary to further this state interest because it is doubtful if the district would have been formed unless the persons paying the expenses could control them."

This reasoning is similar to that expressed by the California District Court of Appeal in *Schindler v. Palo Verde Irrigation District*, 1 Cal.App.3d 831 (1969), in which the Court upheld the statute creating the Palo Verde Irrigation District in which voting rights were apportioned among landowners in proportion to the value of their land. In that case, the Court said:

> "The state clearly has a compelling interest in the reclamation of waste lands through flood pro-

tection, drainage and irrigation works. (See *People v. Sacramento Drainage Dist.*, 155 Cal. 373, 379-381 [103 P. 207].) In many circumstances, such as undoubtedly existed in Palo Verde Valley in 1923, the lands to be reclaimed are virtually uninhabited. The grant of election franchise to land owners, resident and non-resident, corporate and individual, is necessary to 'further a compelling state interest.' Absent the voting qualification provided by the Act, it is doubtful that the District could have been formed or functioned. The activities of the District no doubt affect the economy of the area and to that extent District affairs may be of interest to all inhabitants irrespective of land ownership, but such general interest, standing alone, cannot be said to constitute, as a matter of law, a direct, primary and substantial interest entitling all inhabitants to vote. Such general economic interest is indirect, not primary and substantial. (See *Atchison etc. Ry. Co. v. Kings County Water Dist.*, 47 Cal.2d 140, 144-145 [302 P.2d 1].)

"Since the benefits and burdens accrue to each landowner in proportion to the extent of land owned, the grant of franchise in proportion to the assessed value of land ownership fairly distributes voting influence among those primarily and directly interested in direct proportion to the stake each has in the District. We conclude that the existing method of allocating voting rights among land owners satisfies the constitutional standards prescribed by *Kramer*."

Another recent state court decision which held that the one-man, one-vote rule did not apply to limited-

purpose districts is that of the Supreme Court of Wyoming in *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, ... Wyo. ...., 490 P.2d 1069 (1971). That case involved a limited-purpose district in which a landowner was entitled to one vote for each acre of land owned by him. The Court upheld the constitutionality of that statute analogizing it to a corporation where a shareholder casts as many votes as he owns shares.

Appellants suggest that decisions such as the foregoing are judicial aberrations created by judges who do not understand the meaning of a republican form of government, but instead, prefer the comforts of an oligarchy. We are even told that Mr. James Madison might feel uncomfortable in the company of such autocrats. This rhetoric not only overlooks the fact that Madison espoused an electoral system where only freeholders could vote in all elections, but totally disregards the fact that this Court has always recognized the sovereign power of the State to seek to further a compelling State interest in a variety of ways.

In the case at bar, the State of California was able to accomplish the objective of having a large and uninhabited area of land, subject to devastating cycles of flooding and drought, reclaimed and brought into production through the instrumentality of the Tulare Lake Basin Water Storage District, among other entities. By banding together, the landowners were able to undertake three multimillion dollar projects to improve their water supply. They paid for it entirely. There is nothing unconstitutional in such an undertaking. This Court's decision in *Kramer* delineated with care the area in which the states may legislate in this fashion. The case at bar falls well within this protected area.

Granting the landowners the right to vote in a California water storage district general election does not tender any question of any substance to this Court. If the matter were before the Court on a writ of certiorari, it would be denied.

The judgment of the Court below should be affirmed in accordance with Rule 16 1(e).

Dated: May 30, 1972.

Respectfully submitted,

ROBERT M. NEWELL,
ERNEST M. CLARK, JR.,
By ROBERT M. NEWELL,
Attorney for Appellee.

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IN THE

Supreme Court of the United States

October Term, 1972
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Appellants,

vs.

TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district,

Appellee.

On Appeal from the United States District Court for the Eastern District of California.

BRIEF FOR THE APPELLANTS.

Opinions Below.

The opinion of the United States District Court for the Eastern District of California has not been reported. Copies of the memorandum and order convening a three-judge court, of the memorandum and order of that court, and of the concurring and dissenting opinion of Circuit Judge Browning are printed in the Appendix.

Jurisdiction.

This suit was brought under 28 U.S.C. §2281, to restrain the enforcement, operation and execution of a

State statute as unconstitutional. The judgment of the United States District Court (three judges) was rendered February 17, 1972, and entered March 10, 1972. Notice of appeal was filed in that court on March 14, 1972. The jurisdictional statement was filed May 8, 1972, and probable jurisdiction was noted June 26, 1972. The jurisdiction of the Supreme Court of the United States to review this decision by direct appeal is conferred by Title 28, U.S. Code, §§1253 and 2101(b).

Statutes Involved.

Sections 41000 and 41001 of the California Water Storage District Law (Water Code, §§41000 and 41001) are as follows:

> "§41000. Qualification. Only the holders of title to land are entitled to vote at a general election.
>
> "§41001. Vote in precinct; number of votes. Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars ($100), or fraction thereof, worth of land, exclusive of improvements, minerals, and mineral rights therein, in the precinct."

The Question Presented.

Does a statute which restricts the franchise in a water storage district to landowners, and grants each of them one vote for each $100 of assessed valuation, deny farmers and residents not owning land, and all landowners smaller than the largest, the equal protection of the laws?

Statement of the Case.

Plaintiffs C. Everette and Fred Salyer are two of the eleven directors of defendant Tulare Lake Basin Water Storage District, which comprehends 193,000 acres in Kings and Tulare Counties, California. Plaintiff Salyer Land Company is a large owner and lessee of land in that district. Plaintiff Harold Shawl is a small landowner, and plaintiff Lawrence Ellison is a resident of the district who owns no land. All joined in an action filed in the United States District Court for the Eastern District of California on May 5, 1970, challenging the constitutionality of §§41000 and 41001 of the California Water Code, which limit the franchise in water storage districts to landowners, and weight the ballot by granting one vote for each one hundred dollars of assessed valuation. The complaint also alleged that the district was malapportioned.

On November 13, 1970 United States District Judge Crocker filed a memorandum and order stating that the complaint "presents a substantial constitutional question as to whether the sections of the California Water Code are in conflict with the United States Constitution", and convening a three-judge court. That court, which was composed of Circuit Judge Browning and District Judges Crocker and Schnacke, received the case on an agreed statement of facts, and rendered its decision February 17, 1972. The majority, composed of Judges Crocker and Schnacke, held Water Code sections 41000 and 41001 constitutional, sustaining both the exclusion of non-landowners from the franchise and the weighting of that franchise according to assessed valuation. Circuit Judge Browning concurred in so much of the opinion as excluded non-

landowning residents from the ballot, but dissented from the exclusion of farmer lessees and from the weighting of the franchise by assessed valuation. All three judges agreed that the district was malapportioned, the majority finding its failure to redivision itself for forty years "a classic violaton of equal protecton", and it was directed "to submit a plan to correct this malapportionment within six months of the date this decision becomes final". Plaintiffs have appealed from that part of the judgment sustaining the validity of §§41000 and 41001 of the Water Code. The defendant district has not appealed that part of the judgment which directs that it be reapportioned.

Summary of Argument.

In "landowner" districts such as the one at bar all landowners are permitted to vote, whether or not they are residents, but farmers who lease rather than own land are denied the franchise. Their interest in the district's operations is patent, and Circuit Judge Browning dissented from the majority below on the issue of farmer lessee exclusion:

> "This group's interest in the district's projects to increase the water available for farming and to improve its distribution is indistinguishable from the interest of the owners. They are also equally interested in the cost of the district's projects, for this expense will be passed on to them by express agreement or in the form of increased rentals. *See, e.g., Phoenix v. Kolodziejski, supra,* 399 U.S. 204, 210-11. And obviously the state's interest in intelligent and responsible decisions regarding the district's water management program is not advanced by excluding those who actually farm the land."

Residents of the District otherwise qualified to vote ought not to be excluded simply because they do not own land. The primary concern of this district is with acquiring water in time of shortage and repelling it in time of flood. These concerns are of such general and public importance that the resident citizen ought not to be excluded. The plaintiff Lawrence Ellison is a non-landowner resident who is not permitted to vote in district elections. The record makes it clear that he is interested in water matters, as is any mature citizen who lives in the area; his situation is not distinguishable from that of the non-landowning bachelor who could not vote in the Union Free School District, the franchise being there limited to landowners and parents of school children. Kramer was interested in education; the plaintiff Lawrence Ellison is interested in water. This Court struck down the exclusion of the interested bachelor, although landless and childless. *Kramer v. Union Free School District,* 395 U.S. 621 (1969). Exclusion of plaintiff Lawrence Ellison, although landless, denies him the equal protection of the laws. *Cipriano v. City of Houma,* 395 U.S. 701 (1969); *Phoenix v. Kolodziejski,* 399 U.S. 204 (1970).

The parceling of the franchise according to assessed valuation has delivered the affairs of the defendant district into the hands of the largest landowner, The J. G. Boswell Company, which has resulted in a system whereby there has been no general election since 1947. Under §§41000 and 41001 of the California Water Code, The J. G. Boswell Company has 37,825 votes in the defendant District; the franchise is openly and candidly based on wealth. The scheme by which the District is governed cannot withstand even momentary analysis. As this Court stated in *Harper v. Virginia*

State Board of Elections, 383 U.S. 663 (1966), "A state violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes affluence of the voter . . . an electoral standard". See the statement in *Gordon v. Lance*, 403 U.S. 1 (1971):

> "While Cipriano involved a denial of the vote. a percentage reduction of an individual's voting power in proportion to the amount of property he owned would be similarly defective. See Stewart v. Parish School Board, 310 F. Supp. 1172 (E.D. La.) aff'd, 400 U.S. 884 (1970)."

Circuit Judge Browning dissented from the majority below on the issue of weighted voting:

> "There is nothing in the record to support the assumption that a small landowner is less likely than a large one to possess the information and understanding of water development problems that is requisite to intelligent and responsible voting on the affairs of a water storage district. *Cf. Harper v. Virginia Board of Elections*, 383 U.S. 663, 668 (1966). And the landowner's interest in finding and implementing solutions to those problems is no less acute because his operation is small. Efficient production from his smaller acreage may be of greater economic consequence to him; and the lesser absolute share of the cost of district projects he may be required to bear may impose a greater burden."

ARGUMENT.

Legislation Denying the Franchise to Residents and Farmers in the Defendant District Who Own No Land, and Apportioning the Franchise Among Landowners on the Basis of Assessed Valuation, With One Vote for Each $100, Denies the Equal Protection of the Laws to Such Residents and Farmer Lessees, and to All Landowners Smaller Than the Largest.

California and a number of the Western states have landowner districts for the production and conservation of water. The notion of landowner participation in the franchise, whether or not they be resident, is genuine enough. The interest of a nonresident landowner is real, and there would appear to be no constitutional barrier to allowing such nonresident to vote. In fact there are some landowner districts that have no residents; exclusion of all nonresidents would mean that there could be no electorate. The quarrel of these appellants is not with the system whereby nonresident landowners have the franchise; it is the weighting of that vote by assessed valuation, and the exclusion of nonlandowner residents and farmer lessees.

The vote in the court below was two to one on the issue of participation of nonresident farmer lessees, although the majority did not discuss the issue. On the issue of nonlandowning residents, the court below was unanimous in its decision against these appellants. It is respectfully submitted that the court below was wrong. It is a heavy thing to say that a citizen of the United States may not vote in a public election held in the community in which he lives. The subject matter of the election ultimately is water; in California the only element more closely allied to the citizen's welfare would be the air itself.

The suggestion that without such exclusion the state might not be able to create water storage districts is not impressive. Irrigation districts are common in California and in those districts only residents may vote. Some irrigation districts have more residents than the defendant District; some have less. This District has received hundreds of thousands of dollars in federal funds. All citizens have a joint and common interest in those funds, and a joint and common interest in seeing that they are wisely spent. All citizens have a joint and common interest in seeing that an agency of government is well and properly run. The operations of the Department of Defense are the proper concern not only of military men alone, as the operations of the Department of Agriculture, Department of Commerce, and Department of Justice are the proper concern not only of farmers, businessmen, and lawyers alone. By like token the operations of Tulare Lake Basin Water Storage District are of concern to every person resident therein.

Tulare Lake Basin Water Storage District is a political subdivision of the State of California[1], closely akin in substance and function to an irrigation district.[2]

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[1]Plaintiff's Exhibit 14 is an opinion of the Attorney General of California dated February 20, 1969, the salient portion of which is as follows: "I have concluded that water storage districts are considered political subdivisions of the State". Compare the language of *Avery v. Midland County*, 390 U.S. 474, 479 (1968): "The Equal Protection Clause reaches the exercise of state power however manifested, whether exercised directly or through subdivisions of the State".

[2]Calif. Water Code §39060 is as follows: "The [water storage] districts formed pursuant to this division are districts of the nature of irrigation, reclamation, or drainage districts in respect to all matters contemplated in the provisions of the constitution of the State of California relating to irrigation, reclamation, or drainage". Defendant district has conceded that water storage districts and irrigation districts "are virtually identical in all respects relevant to this case". Reply memorandum filed September 30, 1970, page 8.

The great difference is in government. In irrigation districts all registered voters have the franchise.[3] In water storage districts none may vote but landowners[4] and their vote is weighted; there is one vote for each one hundred dollars of assessed valulation.[5] The result is that almost all the seventy seven residents of the district are disenfranchised. Farmers leasing but not owning land, although vitally interested in and affected by the district's operation, have no voice in its governance. The hierarchy of votes among landowners runs from one vote each for certain very small landowners to 37,825 votes for the J. G. Boswell Company. As of the date of filing this litigation six of the eleven directors of the district were Boswell employees or stockholders. Elections have little point in such a system, and although California law provides for general elections in water storage districts every other year,[6] this district had had none since 1947.[7]

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[3]Calif. Water Code §20527; Elections Code §§20, 21.

[4]Calif. Water Code §41000.

[5]Calif. Water Code §41001.

[6]Calif. Water Code, §41300.

[7]Plaintiff Salyer Land Company called a special election in 1967, Calif. Water Code §41550. On May 19, 1967 the district's then and present president, longtime Boswell employee, director and stockholder Louis T. Robinson, addressed the California Districts Securities Commission as follows:

> "MR. ROBINSON: I know you shouldn't forecast elections and that causes me a little hesitancy to say what I am going to say.
>
> *"The eleven divisions in this large farming operation are completely controlled.* You are going to have the same eleven directors on Tuesday that you have got today—with one exception. One of the directors is having some health trouble and he is going to be replaced; but other than that, they are going to be the same eleven directors."
>
> "MR. ROBINSON: Well, *I have no concern about the election.*

(This footnote is continued on next page)

Under California law a unit such as Tulare Lake Basin Water Storage District is exclusively governmental.[8] Upon formation of a water storage district all water rights of the state within the district are given, set apart and dedicated to it.[9] Water is the life blood of California; the special importance of water is recognized both by its constitution[10] and statutes.[11]

Apart from its control of California's most vital natural resource, Tulare Lake Basin Water Storage District acts in a governmental capacity. It had a budget of $481,000 in 1970 and $405,000 in 1971. It owns laterals connecting with the California Aqueduct which have been constructed "at a cost of approximately $2,500,000."[12] It possesses and has exercised the power of eminent domain.[13] It enjoys the tax immunity granted by the State of California to public bodies.[14] It is subject to the provisions of the statute conferring govern-

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"But suddenly if a new board of directors were to come in, why then I would have nothing but opinion. But I have no concern about the election. *The eleven divisions are controlled by people with enough votes to put back the same directors they have now*—including the two Salyers that are dissenting at this time. They will be returned; the other nine will be returned."

(Emphases added throughout this brief.)

[8]"State agencies such as irrigation or reclamation districts * * * are agencies of the state whose functions *are considered exclusively governmental;* their property is state owned, held only for governmental purposes; they own no land in the proprietary sense." *Glenn-Colusa Irrigation District v. Ohrt*, 31 Cal.App.2d 619, 88 P.2d 763, 765 (1939).

[9]Calif. Water Code, §43158.

[10]Article 14, Section 3: "It is hereby declared that because of the conditions prevailing in this state the general welfare requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable. . . ."

[11]Calif. Water Code, §§100, 102, 104, 105.

[12]Answer of defendant, page 8.

[13]Calif. Water Code, §43530.

[14]Calif. Water Code §43508.

mental immunities and to the exceptions therefrom imposing liability.[15] It may issue general obligation bonds secured by assessments levied on the lands in the district.[16] The district may provide tolls and charges for the use of water, irrigation, and power,[17] and it may sell surplus water and power.[18]

Tulare Lake Basin Water Storage District submitted the opinion of the Attorney General of California that it is a political subdivision of the state as part of an application for federal monies, pursuant to the Federal Disaster Act, Public Law 875, and received $234,512.24 from the federal government pursuant to that application. The federal legislation authorizing this expenditure limited the grants to "any project of a State, county, municipal or other local government agency for flood control, navigation, irrigation, reclamation, public power, sewage treatment, water treatment, watershed development, or airport construction. . . ."[19]

The defendant district comprises most of the dry bed[20] of Tulare Lake in Kings and Tulare Counties, California. Four major operators, the J. G. Boswell Company, plaintiff Salyer Land Company, West Lake Farms and South Lake Farms, farm almost eighty five

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[15]Calif. Government Code, §811.2.

[16]Calif. Water Code §§4550 ff.

[17]Calif. Water Code §§43006 ff., Calif. Water Code §§43025 ff.

[18]Calif. Water Code §§43507, 43533, 43555, 43001, 43026. An official summary of the powers and functions of water storage districts, taken from Bulletin No. 155, Department of Water Resources, State of California, "General Comparison of California Water District Acts", is attached as Appendix A.

[19]42 U.S.C.A. §1855ee.

[20]The great flood of 1969, largest since the legendary flood of 1906, inundated approximately 88,000 of the district's 193,000 acres. Evaporation and irrigation use gradually dissipated the water, and the lake area became completely dry again in August, 1971.

per cent of the land in the district. The remaining fifteen per cent is farmed by smaller farmers; if the latter be lessees they are accorded no voice whatever in the functions of the district. The *amici curiae*[21] and the defendant have been at some pains to justify this situation. Counsel for California Central Valleys Flood Control Association claimed below that this problem

> "... is easily remedied within the existing procedure by the tenant requesting in his lease a provision for a proxy from the lessor (as allowed in Section 41,002) to cast the lessor's votes in district elections in exchange for the obligation to pay the district assessments on the land leased."[22]

Counsel for the Irrigation District Association of California put it like this:

> "Certainly, lessees of owners have a more direct interest and are perhaps more greatly 'affected' by District activities. Many leases, however, are on a one year or year to year basis. In each case their occupancy is contractual so to that extent they may bargain for and receive such as-

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[21]The California Central Valleys Flood Control Association filed a brief *amicus curiae* in the court below upon its representation that its constituent district "all vote on the same basis as the defendant in this action, and accordingly the decision rendered herein will have drastic and far reaching effects upon all reclamation districts in California". The Irrigation Districts Association of California also filed a brief *amicus curiae* below, stating that that Association "is vitally interested in any attack on landowner voting qualifications in view of the fact that a majority of the over 250 public districts which are members of the Association, use landownership voting principles in some form or another under the various State statutes under which they are formed. The members of the Association distribute for irrigation, municipal and domestic use, over 75% of the water in the State of California".

[22]Brief below of California Central Valleys Flood Control Association, page 10.

surances as they request as to how the landowner will act in reference to his control over District activities."[23]

The defendant district was more candid than either of the *amici:*

> "... If the lessee's bargaining position is strong enough, he can perhaps by contract acquire a proxy to cast his landowner's ballots. If his bargaining position is not that strong, he will have to make the best deal he can. . . ."[24]

Judge Browning was unimpressed with this reasoning.

> "Defendant suggests that the lessees might obtain a provision in the lease for a proxy from the lessor as allowed by §41002. If a statute otherwise infringes upon the Equal Protection Clause, the infringement of constitutional rights is not ameliorated by a possibility that relief might be obtained through private contracts."

The majority below did not discuss the problem of the farmer lessees. This voteless group is obviously interested and affected, by any criterion, and Judge Browning addressed himself to the issue:

> "Contrary to the majority's view, however, this is not true of the exclusion of those who lease lands in the district for farming. This group's interest in the district's projects to increase the water available for farming and to improve its distribution is indistinguishable from the interest of the owners. They are also equally interested in the cost of the district's projects, for this expense

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[23]Brief in the trial court of Irrigation Districts Association of California, page 20.

[24]Defendant's Reply Brief in the trial court, pages 9, 10.

will be passed on to them by express agreement or in the form of increased rentals. *See, e.g., Phoenix v. Kolodziejski, supra,* 399 U.S. 204, 210-11. And obviously the state's interest in intelligent and responsible decisions regarding the district's water management program is not advanced by excluding those who actually farm the land."

The Court below was unanimous in permitting the exclusion of plaintiff Lawrence Ellison from the ballot, despite the fact that Ellison is 62, has been in the area for forty years, has held responsible positions with several of the larger agricultural operators in the district, is interested in water matters, is a registered voter and a resident of the district, and would like to vote. It is said that he does not have a sufficient interest. It is difficult to agree. He lost his job with The J. G. Boswell Company because of layoffs occasioned by the 1969 flood. The record in this case demonstrates that the flooded area was increased over three feet in depth by the reception of 300,000 acre feet of flood water from the Kern River. This would have been reduced to approximately 100,000 acre feet had Buena Vista Lake been used for flood storage.[35] In past years the flood waters of the Kern River have filled Buena Vista Lake in Kern County before going on to Tulare Lake.[36] 1969 is the first year in recorded history in which this was not the case. The record made in the trial court shows that the non-Boswell directors of the defendant district sought to have it take action to ensure that Buena Vista Lake receive the floor waters of the Kern

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[35]A record was made on this in the court below, and the fact is not disputed by defendant.

[36]A map showing the relative positions of Buena Vista Lake and Tulare Lake is in the record as Exhibit 4, and has been reproduced in the Appendix.

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to its full capacity, a position the record demonstrates the defendant district uniformly to have taken in the past. In 1969 the six votes of The J. G. Boswell Company were cast to prevent the defendant district from so acting; the reason for the break with precedent was that in 1969 The J. G. Boswell Company was itself farming the whole of Buena Vista Lake. It was at this time that plaintiff Salyer Land Company, which itself farms some 40,000 acres inside and outside the defendant district, and whose interest might reasonably be supposed to have lain with weighted landowner voting, became convinced that it was a poor system. But those who say that the residents have no interest were not at Tulare Lake in 1969. The water rose to a height of 192.5 U.S.G.S. datum, higher than any residence in the district. Had the major levees broken, the homes would have been flooded. The minutes of the meeting of the board of directors of the defendant district held March 4, 1969, at the height of the flood emergency, are plaintiffs' Exhibit 6 in the record made in the court below. That meeting determined, on a vote of six[27] to four, that the flood waters of the Kern River would come into the district, while Buena Vista Lake remained dry. Anyone who says that persons occupying homes in the district were

[27]The six Boswell directors were in conflict of interest because of the Boswell Company's possession of Buena Vista Lake, and the point was made at the meeting that they should have been disqualified on the issue. Boswell counsel appeared at the meeting and the minutes state as follows:

> "Attorney Kloster at this point made disclosures for the record as to the association of six of the directors with the J. G. Boswell Company, indicating in some detail their stock ownership and employee affiliations. The six directors were Armor, Barnes, Evers, Fisher, Robinson and Vandergriff. He stated further that he had advised these directors they were not disqualified to vote with reference to the Buena Vista matter."

not vitally interested in and affected by that decision, with great respect, simply was not there.

Even more indefensible than the exclusion of residents from the franchise, however, is the weighting of the ballot by assessed valuation. The result is to give several of the smaller landowners one vote each. Thomas J. Amos has one vote, as do Ada Hornbeak and Rose Catanz. Plaintiff Harold Shawl shares 23 votes with his partner, springing from the ownership of 65 acres. But The J. G. Boswell Company is entitled to vote 37,825 times. Judge Browning dissented from the majority on the issue of the weighted franchise:

> "Defendant has identified no compelling state interest in weighted voting in water storage district elections.
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> * * *
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> "Neither can it be said that the state's interest in intelligent and responsible elections is served by weighted voting. There is nothing in the record to support the assumption that a small landowner is less likely than a large one to possess the information and understanding of water development problems that is requisite to intelligent and responsible voting on the affairs of a water storage district. *Cf. Harper v. Virginia Board of Elections,* 383 U.S. 663, 668 (1966). And the landowner's interest in finding and implementing solutions to those problems is no less acute because his operation is small. Efficient production from his smaller acreage may be of greater economic consequence to him; and the lesser absolute share of the cost of district projects he may be required to bear may impose a greater burden. As Judge Wisdom said in a related context, 'In terms of voting re-

sponsibility, there is no necessary correlation between the amount of an assessment and the degree of interest a taxpayer may have in a particular bond issue. A ten thousand dollar house to one person may mean more to that person than a hundred thousand dollar house to another.' *Stewart v. Parish School Board of Parish of St. Charles,* 310 F. Supp. 1172, 1179 (E.D. La. 1970), *aff'd* 400 U.S. 884 1970). *See also Burrey v. Embarcadero Municipal Improvement District,* 5 Cal. 3d 671 (1971)."

It is submitted that Judge Browning's view is sustained by the decisions of this Court. In *Gray v. Sanders,*[28] this Court asked, "How . . . can one person be given twice or ten times the voting power of another person . . .?"[29] In *Gray* the Court went on to speak of "equality among those that meet the basic qualifications".[30] In *Reynolds v. Sims,*[31] this Court thought it "inconceivable" that a state law could permit the votes of some citizens to be "multiplied by two, five or 10. . . ."[32] In *Harper v. Virginia State Board of Elections*[33] this Court held that "a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter . . . an electoral standard. Voter qualifications have no relation to wealth. . . ."[34] In *Harper* this Court went on to say that "Wealth, like race, creed, or color, is not germane to one's

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[28]372 U.S. 368 (1963).
[29]372 U.S. at 379.
[30]372 U.S. at 380.
[31]377 U.S. 533 (1964).
[32]377 U.S. at 562.
[33]383 U.S. 663 (1966).
[34]383 U.S. at 666.

ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race [Cits. omitted] are traditionally disfavored. [Cits. omitted]. To introduce wealth . . . as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor."[38] "For to repeat, wealth . . . has, in our view, no relation to voting qualifications; the right to vote is too precious, too fundamental to be so burdened or conditioned".[39]

In *Kramer v. Union Free School District*,[37] this Court struck down a New York statute limiting the franchise in certain school districts to those who owned or leased real estate, or who were the parents of school children. In *Cipriano v. City of Houma*[38] and *Phoenix v. Kolodziejski*,[39] this Court struck down statutes of Louisiana and Arizona limiting the franchise in revenue and general obligation bond elections; respectively, to property owners.[40] In *Hadley v. Junior College District*,[41] this Court held that "once a State has decided to use the process of popular election and 'once the class of voters is chosen and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded'."[42]

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[38]383 U.S. at 668.
[39]383 U.S. at 670.
[37]395 U.S. 621 (1969).
[38]395 U.S. 701 (1969).
[39]399 U.S. 204 (1970).

[40]In *Phoenix* Mr. Justice White said, "Presumptively, when all citizens are affected in important ways by a governmental decision subject to a referendum, the Constitution does not permit weighted voting or the exclusion of otherwise qualified citizens from the franchise. . . .
[41]397 U.S. 50 (1970).
[42]397 U.S. at 58, 59.

In *Gordon v. Lance*,[43] Mr. Chief Justice Burger stated as follows:

> "While Cipriano involved a denial of the vote, a percentage reduction of an individual's voting power in proportion to the amount of property he owned would be similarly defective. See Stewart v. Parish School Board, 310 F. Supp. 1172 (E.D. La.) aff'd, 400 U.S. 884 (1970)."[44]

Stewart, the case cited by the Chief Justice, was a three-judge court decision involving constitutionality of a Louisiana statute limiting the franchise to property owners, and providing also for weighted voting. The decision was affirmed by the Supreme Court,[45] and that affirmance has precedential value. Let us examine what was affirmed in *Stewart:*

> "By gearing the weight of each elector's vote to the amount of his assessed property the laws debase the vote of small landowners. We hold therefore that the exclusion of all non-property taxpayers and the dilution of the small property holder's vote violate the Equal Protection Clause of the Fourteenth Amendment."[46]

* * *

> "*Kramer* and *Cipriano*, with the aid of Reynolds v. Sims, *Avery* and *Harper*, teach that laws restricting the right to vote—*we say, in any election*—do not carry the usual presumption of constitutionality."[47]

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[43] 403 U.S. 1 (1971).
[44] 403 U.S. at 4.
[45] 400 U.S. 884 (1970).
[46] 310 F.Supp. at 1173.
[47] 310 F.Supp. at 1176.

"A significant result of this reading of *Kramer* is that property qualifications *simpliciter* may no longer be acceptable eligibility tests, even in such traditional areas as school millage or sewer assessment elections. It would make no difference that a community's tax structure was such that only property owners directly paid for such proposals. The Court's concept of 'interest' will not permit the exclusion of residents who do not own property, since they share a concern for and stake in the quality of the schools the young attend and the operation of the sewers which make the city habitable."[48]

* * *

"There are obvious differences between the case before the court and Kramer, Cipriano, and Turner. It is significant, however, that in none of the cases did the Supreme Court recognize a constitutional difference between a general election and a special-purpose election."[49]

* * *

"The requirement that the bond issue be approved by a majority of the taxpayers voting representing a 'majority of the assessed property owned by those taxpayers who are actually voting' apparently rests on the assumption, first, that property owners have a special pecuniary interest; second, that the larger the assessment the greater the interest and the greater the need to protect large property owners from irresponsible owners having no property."[50]

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[48] *Ibid.*
[49] 310 F.Supp. at 1177.
[50] 310 F.Supp. at 1179.

"In terms of voting responsibly, there is no necessary correlation between the amount of an assessment and the degree of interest a taxpayer may have in a particular bond issue. A ten thousand dollar house to one person may mean more to that person than a hundred thousand dollar house to another.

"The actual effect of gearing assessments to the vote is simply to dilute the participation of small landowners and to exaggerate the participation of large landowners in violation of the one man, one vote canon."[51]

* * *

"There are two constitutional issues in this case: first, the restriction of the franchise to property taxpayers; second, the requirement that the majority of the voters represent a "majority of the assessed property'. Since the Court agrees with the plaintiffs on the first issue, it might be said that it is unnecessary to reach the second issue. But the two limitations have been inseparable since 1898. Moreover, weighting the vote in favor of the large property owner points up the unsoundness of limiting the vote to property taxpayers."[52]

* * *

"At this point in history, this is an intolerable discrimination."[53]

It is not possible to reconcile the reasoning and result in *Stewart* with the reasoning and result of the court below in the case at bar.

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[51] *Ibid.*
[52] 310 F.Supp. at 1180.
[53] *Ibid.*

State court decisions concerning landowner qualifications and weighted voting in special districts are now in considerable confusion. This situation is pointed up by decisions in September and November from the Supreme Courts of California and Wyoming. In *Burrey v. Embarcadero Municipal Improvement District*,[54] the California Supreme Court gave short shrift to a statute limiting the franchise to landowners and giving each landowner "one vote for each one dollar ($1) in assessed valuation of land owned by him. . . ." The Court said that "the equality principle . . . is applicable when the weighted vote is based on property value . . ."[55] and found the system "inconceivable" and "extraordinary".[56]

> "In conclusion, it would be difficult to imagine a more radical variation in voting strength than results from this land value voting scheme. As Wallover, Inc. itself assets, the weighting of votes by land value has continued to guarantee that corporation well over a majority of the votes. Instead of 'one person, one vote' we have here a case of 'one corporation, 285,689 votes.' "[57]

The California Supreme Court in *Burrey* relied heavily on this Court's decisions in *Avery, Hadley, Reynolds, Phoenix, Harper, Kramer,* and *Cipriano*. But two months later the Supreme Court of Wyoming, decrying "a tendency for judges and courts to overreact to decisions of the United States Supreme Court", held in *Associated Enterprises, Inc. v. Toltec Watershed Im-*

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[54] 5 Cal. 3d 671, 97 Cal.Rptr. 203, 488 P.2d 395 (1971).
[55] 5 Cal. 3d at 678.
[56] *Ibid.*
[57] 5 Cal. 3d at 679. Compare the situation of the J. G. Boswell Company in the case at bar.

provement District[58] that a Wyoming statute limiting the franchise to landowners with provision for a weighting factor for acreage, was not invalid. The Court quoted with approval from a 1902 Missouri case:[59]

> "The fact that each owner is entitled to one vote for every acre of land owned by him creates no more infirmity in the law than the right of each stockholder of any corporation to cast as many votes as he owns shares of stock renders such laws invalid. In both instances the majority in interest, instead of the majority in number, controls; and who shall say such laws are not just?"[60]

The Wyoming Court also relied on a 1908 decision from Nebraska, *State ex rel. Harris v. Hanson.*[61] The essence of the *Harris* decision is as follows:

> ". . . [I]t cannot be said that the formation of the district was illegal because electors of the district owning no real estate were barred from participating therein, or because each property owner was given a vote for each acre or lot of land he owned."[62]

The interesting thing is that the Nebraska court relied on the old California case of *People ex rel. Van Loben*

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[58]..... Wy. ....., 490 P.2d 1069 (1971). *Toltec* was appealed to this Court, as No. 71-1069. Probable jurisdiction was noted June 12, 1972.

[59]*Mound City Land & Stock Co. v. Miller,* 170 Mo. 240, 70 S.W. 721 (1902).

[60]490 P.2d at 1072.

[61]80 Neb. 724, 115 N.W. 294, 80 Neb. 738, 117 N.W. 412 (1908).

[62]115 N.W. at 298.

Sels v. Reclamation District No. 551,[65] a decision of dubious value in the state of its origin. The California Supreme Court in *Burrey* refers to it as one of "a series of old California cases" and says, "We need not comment upon the continuing validity of these cases; they do not govern here".[66] It is not possible to reconcile the reasoning and result in *Toltec* with the reasoning and result in *Burrey*, just as it is not possible to reconcile the reasoning and result in the case at bar with *Burrey*, *Stewart*, or this Court's decisions in *Harper*, *Hadley*, *Kramer*, *Cipriano*, and *Phoenix*.

The intermediate appellate courts in California have also wrestled with the problem. In *Schindler v. Palo Verde Irrigation District*[67] the statute concerned limited the franchise to landowners, and gave them "one vote for each $100 of assessed value of his property . . ." A small landowner sued to establish the principle of "one landowner—one vote". The California Court of Appeal for the Fourth Appellate District held that the Voting Rights Cases apply to an irrigation district.[68] But it nevertheless sustained weighted voting

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[65] 117 Cal. 114, 48 Pac. 1016 (1897).

[66] 5 Cal. 3d at 677.

[67] 1 Cal. App. 3d 831, 82 Cal. Rptr. 61 (1969).

[68] "As we interpret *Kramer*, *supra*, the guidelines laid down in it must be followed in testing the constitutionality of a statutory distribution of voting rights in elections pertaining to the affairs of a governmental unit or public corporation whether it be a school district or some other limited special purpose unit. * * * We perceive no logical basis for holding that the same constitutional standards of fairness governing distribution of the election franchise for school district elections should not be applicable to elections pertaining to special entities exercising other limited governmental funtions. * * * Schools as well as water service may be private or public. But when the state engages in those activities through a governmental agency and provides for citizen participation through the election process, the distribution of voting rights must meet the equal protection standards prescribed in *Kramer* and *Cipriano*." 1 Cal. App. 3d at 837.

according to the assessed value of landownership.[67] It is not likely that *Schindler* would have been sustained on appeal. No hearing was sought in the California Supreme Court; that Court in the course of the opinion in *Burrey* spoke of *Schindler* with some asperity.[68]

Throughout the proceedings in this case the defendant has argued it is not a unit of government to which the standards of the voting rights cases apply. The posture of that issue in the Supreme Court is now of some interest. For the court below unanimously found the defendant district to be malapportioned, and directed that its eleven divisions be so cast as to reflect approximately the same number of dollars. *But the necessary predicate of the decision on apportionment is that Tulare Lake Basin Water Storage District is sufficiently a governmental body to require such judicial intervention, Reynolds v. Simms,*[69] *Avery v. Midland County,*[70] *and the defendant district has not appealed that portion of the judgment.* The present appellants appealed only that part of the judgment which refused to strike down

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[67]". . . [T]he grant of franchise in proportion to the assessed value of landownership fairly distributes voting influence among those primarily and directly interested in direct proportion to the stake each has in the District." 1 Cal. App. 3d at 839.

[68]"This decision may be difficult to reconcile with the Supreme Court cases on this subject, particularly Kolodziejski which was decided after Schindler. (See Girth v. Thompson (1970) 11 Cal. App. 3d 325, 330, 89 Cal. Rptr. 823.) However, since irrigation districts are substantially different from the EMID—their powers are fewer and more limited to the particular purpose for which the districts were created—we do not reach that question here." *Burrey v. Embarcadero Municipal Improvement District,* 5 Cal. 3d 671, 682 (1971). The *Girth* case, cited with approval by the court in *Burrey,* held that the voting rights cases applied to an irrigation district and disapproved of an earlier contrary holding in *Thompson v. Board of Directors,* 247 Cal. App. 2d 587 (1967).

[69]377 U.S. 533 (1964).

[70]390 U.S. 474 (1968).

§§41000 and 41001 of the Water Code. It results that the decision below finding the district to be malapportioned, and requiring it to be reapportioned, is not before the Supreme Court. These appellants submit that the predicate for that decision, that Tulare Lake Basin Water Storage District is sufficiently a governmental unit to justify the district court's intervention, is now the law of the case, there having been no appeal.

Conclusion.

Tulare Lake Basin Water Storage District is an abberration, a relic in the twentieth century. Plato described oligarchy as "government resting on a valuation of property";[71] and §41001 of the California Water Code is nothing less than a legislative mandate for oligarchy.

The residents of Tulare Lake Basin Water Storage District should be admitted to the franchise, whether or not they own land. Farmers leasing land in that district should be permitted to vote in its elections. The landowners in that district should have an equal franchise. It is respectfully submitted that these appellants, plaintiffs below, are entitled to a decree that §§41000 and 41001 of the California Water Code are constitutionally infirm.

Dated this 9th day of August, 1972.

C. Ray Robinson,
Thomas Keister Greer,
Counsel for Appellants.

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[71]The Republic (Bakewell Ed., p. 323).

APPENDIX A.

Bulletin No. 155, Department of Water Resources, State of California, "General Comparison of California Water District Acts" pp. 103-105 (1965):

"WATER STORAGE DISTRICTS

1 Citation	Water Code, Div. 14 comprising Secs. 39000-48401 (derived from 1921:914:1727, D. A. 9126). "California Water Storage District Law".
2 Purposes	Storage and distribution of water; drainage and reclamation in connection therewith; generation and distribution of power incidental thereto (Secs. 42200, 43000, 43025); such uses are a public use (Sec. 39061).
3 Territory	Lands already irrigated or susceptible of irrigation from a common source and by same system; need not be contiguous (Secs. 39400-39402).
4 Overlap	May include land in other agencies including other water storage districts having different plans, purposes, and objects (Sec. 39401).
5 Pet'rs.	Majority of holders of title or evidence of title representing majority in value of lands, or 500 holders of 10% in value (Sec. 39400); cost bond required (Sec. 39428).
6 Pet. to	Department of Water Resources (Sec. 39430).
7 Procedure	Petition to, and investigation, hearing and order by Dept. of Water Resources, election (majority vote) (Secs. 39400-40103).

8 Voting	1 vote for each $100, or fraction, assessed value of land exclusive of improvements, minerals, and mineral rights; proxy vote allowed (Secs. 41000-41002).
9 Records	Order following hearing on petition and formation, project abandonment, exclusion, and inclusion orders: County Recorder of each county where lands located (Secs. 39779, 40101, 42359, 48081, 48229, 48258); formation, inclusion, and 48258); formation, inclusion, and exclusion records: Secretary of State (Secs. 40104, 40659, 48300).
10 Gov. Code Sec. 54900	Not applicable—assessments not on ad valorem basis.
11 Gov. Bd.	5, 7, 9, or 11 Directors, depending on number of divisions (Secs. 39777, 39928).
12 Eminent Domain	All property necessary for projects of district; private property devoted to use of other districts, cities, or counties may not be taken (Sec. 43530); may not condemn in another county without approval of board of supervisors of affected county (Sec. 43532.5).
13 State and Fed. Coop.	May cooperate and contract with the State and the U.S. under any laws of the State or the Fed. reclamation laws (Secs. 44000-44105); may enter into any agreement appertaining to or beneficial to dist. project (Sec. 43151).

14 Debt Seg.	See "Assessments".
15 Bonds	General obligation, by majority of votes cast by assessed voters (Secs. 45100, 45270, 45400); but see Secs. 42330, 41000 re vote required on adoption of projects and at general elections. General obligation bonds without election upon ⅔ vote of district board and approved by the department or (after July 1, 1965) the Calif. Dists. Sec. Com., if project or contract approved at election and assessments outstanding (Sec. 45102). Unpaid warrants draw interest (Sec. 44626). May issue interest-bearing warrants payable at a future time, the total amount payable in any year not to exceed ¼ of 1% of assessed valuation of land unless approved by the department or (after July 1, 1965) the Calif. Dists. Sec. Commission and may not extend over 5 years unless approved by majority vote at an election (Secs. 44900-44911); may issue direct assessment warrants by ⅔ vote of board and approval of the department or (after July 1, 1965) the Calif. Dist. Sec. Com. to finance project or contract approved at an election (Secs. 45900, 46381).
16 Revenues	Tolls and charges for use of water, irrigation, and other services (Secs 43006, 43007, 47180); power revenues (Secs. 43025, 43026, 47700. 47701); sales of surplus property, water and power (Secs. 43507, 43533, 43555, 43001, 43026); leases (Sec. 43506).

17 Assessments	Assessments for organization and other preliminary expenses equally upon each acre up to $2; additional preliminary assessments up to $2.50 for new projects (Secs. 46000 46009); for all other purposes, assessments of lands according to benefits; may be payable in installments (Secs. 46150-47701, 44030-44032); interim project assessments on each acre, up to $2 per acre (Secs. 46375-46381).
18 Tax. of Dist. Prop.	Dist. works, including reservoirs, dams, rights of way, canals, power plants, transmission lines, etc., not taxable for state, county or city purposes (Sec. 43508).
19 Districts Sec. Com.	Financial supervision and bond certification approval under Dists. Sec. Com. Law is requested (Secs. 44911. 45100, 45101 (operative until July 1, 1965), 45701; Water Code, Sec. 20003); after July 1, 1965, bonds may be issued unless certified (Sec. 45100); keep records (Sec. 43159). After July 1, 1965, perform following duties now exercised by the Dept. of Water Resources: Supervise levy of assessments (Secs. 46000-46381), see that assessments are levied (Sec. 40382), appoint assessment commissioners (Secs. 42355, 46150, 46355, 47551) and issue warrants for their compensation (Secs. 44600, 46154), appoint tax adjustment board (Sec. 46225), supervise au-

thorization and construction of works (Secs. 42200-42752, 44005, 46150), approve purchases in excess of $500,000 (Sec. 43503), examine progress reports and financial statements and make recommendations thereon (Sec. 44430), examine district affairs and make reports (Sec. 44431), prescribe form of district reports and accounts (Sec. 44432), approve issuance of district warrants payable at future times (Sec. 44904), approve issuance of bonds without an election (Sec. 45102), approve direct assessment warrants (Sec. 45900), approve preliminary assessments in excess of 50¢ (Sec. 46008), approve interim project assessments (Sec. 46377).

20 Dept. of Wat. Res.

Receive petitions for formation, investigate, hold elections and supervise organization of new districts (Secs. 39400-40103); give information and make preliminary investigations (Secs. 39081-39082); keep records (Sec. 43159); execute warrants (Secs. 39603, 44600); investigate under Dists. Sec. Com. Law (see "Districts Sec. Com."); fill board vacancies (Sec. 40500); appoint directors where election not required (Sec. 41307). Until July 1, 1965, redivide districts (Sec. 41152); supervise exclusions (Secs. 48000-48087) and inclusions (Secs. 48200-48260); see also "Districts Sec. Com." After July 1, 1965, upon re-

	quest of Calif. Dists. Sec. Com., investigate and report on feasibility of district projects or their abandonment (Secs. 42300, 42500).
21 Inclusion Exclusion	Inclusion (adjacent lands, irrigable from dist. works, if for best interest or district): by petition, hearing, order of the board, and election if sufficient protests made (Secs. 48200-48260); land may be subject to prior capital assessments (Sec. 47550). Exclusion (lands not benefited or if for best interests of district): by petition, hearing, and order of the board (Secs. 48000-48087). Consolidation provided (Sec. 48350).
22 Dissolution	Same as for irrigation districts (Sec. 48400); also dissolved by failure to file report on plans within 10 years (Dept. of Water Resources or, after July 1, 1965, the Calif. Dists. Sec. Com. may extend time 15 years) or by abandonment of plans or failure of voters to approve plans (Secs. 42280, 42360, 42552).
23 No.	9."

IN THE

Supreme Court of the United States

October Term, 1972
No. 71-1456

SALYER LAND COMPANY, a California corporation, C. EVERETTE SALYER; FRED SALYER; LAWRENCE ELLISON; and HAROLD SHAWL,

Appellants,

vs.

TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district,

Appellee.

On Appeal from the United States District Court for the Eastern District of California.

BRIEF FOR THE APPELLEE.

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TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district,

Appellee.

On Appeal from the United States District Court for the Eastern District of California.

BRIEF FOR THE APPELLEE.

Status of the Case.

Appellants (a corporate farmer in the Tulare Lake Basin of California, two individual officers and shareholders of the corporation, and an employee of the corporation residing in the Basin) sought in the United States District Court For the Eastern District of California, a judicial declaration that the formula adopted by the California legislature for the election of directors of a Water Basin Storage District, a special purpose district formed for the purpose of developing and im-

proving the supply of water for agricultural purposes within the District, is discriminatory and in violation of the equal protection clause of the Fourteenth Amendment. The Act, pursuant to which the District was formed, apportioned voting rights among landowners in proportion to the assessed value of their holdings in the District.[1]

A three-judge court was convened to hear the case.[2] The Court in a Memorandum and Order dated February 17, 1972, signed by United States District Judges M. D. Crocker and Robert H. Schnacke, held that apportionment of voting rights among landowners in accordance with the California law did not violate the Constitution in that (1) the District performed no governmental functions of general concern to the populace and provided no service to the general public as found by the Court in *Burrey v. Embarcadero Municipal Improvement District*, 5 Cal. 3d 671 (1971), (2) the State of California has a compelling interest in the development of its water resources, and limiting the vote to landowners is necessary to further this state interest because it is doubtful if the District would have been formed unless the persons paying the expenses could control them, and (3) while the activities of

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[1]The specific statutes attacked by Appellants are Sections 41000 and 41001 of the California Water Storage District Law (Water Code, Sections 41000 and 41001) as follows:

"Section 41000. Qualification. Only the holders of title to land are entitled to vote at a general election.

"Section 41001. Vote in precinct; number of votes. Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars ($100), or fraction thereof, worth of land, exclusive of improvements, minerals, and mineral rights therein, in the precinct."

[2]The three-judge court was convened pursuant to 28 U.S.C., Section 2284.

the District affect the economy of the area, which is of interest to the residents who are not landowners, this is an indirect interest and not a direct primary and substantial interest that would entitle them to vote. For these reasons Judge Crocker and Judge Schnacke considered the voting procedure provided by California law for special purpose districts such as the Tulare Lake Basin Water Storage District to be proper. The two judges also held that the statutory method whereby the District was divided into divisions did violate the Constitution, and the District was ordered to submit a plan to correct the malapportionment. No appeal is taken from this holding.

The third judge, Circuit Judge James R. Browning, concurred in part and dissented in part from the Memorandum and Order of the majority. He agreed that the District performs no governmental functions and provides no service of direct concern to residents of the District. Further, he agreed that the State of California has a compelling reason for excluding from the vote nonresidents of the District who neither own nor lease land within the District. However, he disagreed in part with the majority when he concluded that lessees of land, as well as landowners, should be permitted to vote, and that weighted voting as provided by the California statute was improper.

The Memorandum and Order of Judge Crocker and Judge Schnacke is printed at page 103 of the Appendix filed herein. The Opinion of Judge Browning is printed at page 108.

Appellants ask this Court to overturn the Memorandum and Order of the three-man court.

The Facts.

In 1921, the California legislature enacted the California Water Storage Act in order to provide a flexible response to water problems on a local basis.[3] The legislation was enacted in furtherance of a compelling state interest.[4]

Water storage districts under the Act are formed for the limited purpose of storing and distributing water for irrigation.[5] They are formed by owners holding title to a majority in value of the land within the District, or by not less than 500 title holders whose holdings constitute at least ten percent in value of the land.[6] The landowners petition the California Department of Water Resources for its approval. The petition states the boundaries of the proposed district and a description of the land, the proposed source of water supply, the location proposed for the storage of water for irrigation, any drainage or reclamation connected with the project, any incidental development of hydroelectric energy, the nature of the proposed works, and a prayer that the territory be formed into a water storage district.[7] The Department holds a hearing after notice and makes an order containing a determination of the practicability, feasibility, and utility of the proposed

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[3]The Statutory Law of the State of California is incorporated into codes. Laws pertaining to water and entities concerned primarily with water are in the California Water Code. The provisions of California law dealing with water storage districts are contained in California Water Code, Sections 39000-48401, inclusive.

[4]Conservation, distribution, and control of the water supply are major State concerns. See, *e.g.*, California State Constitution, Article XIV, Section 3; California Water Code, Sections 100, 104, 105.

[5]California Water Code, Section 43000.

[6]California Water Code, Section 39400.

[7]California Water Code, Section 39425.

project, establishes the boundaries of the district, specifies the sources of water and places of storage, and estimates of the cost of the proposed project.[8] The Department is authorized to make all necessary studies, examinations, surveys, plans and estimates of cost. The question of formation is then submitted to an election, in which only landowners, or their representatives, may vote.[9] If the majority vote is favorable, the Department declares the district formed. The qualifications of voters at a formation election are the same as those for general elections, that is, only holders of title to land may vote and each voter may cast one vote for each $100 worth of his land.[10] Landowners may vote in person or by proxy.[11] Fiduciaries and corporations may vote if they represent or hold title to land.[12]

After its formation a water storage district operates only through the device of a district project which has been approved by the Department of Water Resources of the State of California.[13] The issuance of bonds to finance such projects is under the general supervision of the State Treasurer.[14] The Board of Directors of the district makes a report of each district project and its estimated cost to the State Treasurer of the State of California.[15] The State Treasurer makes an independent investigation of the project and enters an order either

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[8]California Water Code, Sections 39775-39800.

[9]California Water Code, Section 41000.

[10]California Water Code, Section 41001.

[11]California Water Code, Section 41002.

[12]California Water Code, Section 41003.

[13]California Water Code, Section 42200, *et seq.*

[14]California Water Code, Sections 42275, *et seq.* (Amended 1971 substituting State Treasurer for District Securities Commission.)

[15]California Water Code, Section 42276.

declaring the project abandoned or approving the report of the Board.[16] If the State Treasurer approves the report, the Board calls a special election on the project.[17] To adopt a project it is necessary that there be a favorable majority of all votes cast and of the qualified voters who voted at the election.[18]

After the adoption of a project, involving as it does the action of the Board, the State Treasurer, the Department of Water Resources, and the landowners of the District, the State Treasurer appoints three commissioners, none of whom can have any interest, directly or indirectly, in any land in the District, to assess the cost of the project and apportion the cost in accordance with the benefits that will accrue to each tract of land held in separate ownership by reason of the expenditure of the money and the completion of the project.[19]

The Commissioners prepare an assessment roll which delineates the assessment charges to each tract of land and states the nature of the benefit to each tract of land. Should objections be filed, the Commissioners appoint two disinterested persons to sit with the President of the Board of Directors as an "adjustment board" to hear the objections. The charges set forth in the assessment roll, certified by the Secretary or approved by the adjustment board if need be, constitute a lien on the land prior to all other liens, except state, county, and municipal taxes and assessments or levies assessed by or under statutory authority.[20]

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[16]California Water Code, Sections 42300-42301.
[17]California Water Code, Sections 42325, *et seq.*
[18]California Water Code, Sections 42355-42550.
[19]California Water Code, Section 42355.
[20]California Water Code, Sections 46175, *et seq.*

In addition to the formation election and project elections, there are general elections at which directors of the district are elected.[21] The duties of the board of directors are carefully stated by the California legislature. Specifically, the board's functions are limited to examining proposed projects, estimating costs, and reporting thereon.[22]

The board has no power to legislate. It only performs carefully prescribed administrative functions concerned with the storage and distribution of water for irrigation purposes.

The Tulare Lake Basin Water Storage District encompasses approximately 193,000 acres, most of which is located in the Tulare Lake Basin. Tulare Lake Basin in turn is a shallow depression of about 270,000 acres in area located west of Corcoran, California.[23]

The Basin is subject to flooding from time to time, principally from the flows of the Kings, Kaweah, Tule or Kern Rivers or combinations thereof. For example, in 1969 one of the largest floods in history inundated portions of the Basin, flooding over 88,000 acres of

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[21]California Water Code, Sections 41300, *et seq.*

[22]California Water Code, Section 42200 reads as follows:

"*Duties of board*

Upon the organization of a district, the board shall make or cause to be made all examinations, surveys, * * * plans and specifications, and estimates of costs for the acquisition, appropriation, diversion, storage, conservation, and distribution of water, any drainage or reclamation works connected therewith, and the generation of hydrolectric energy incident thereto, and the sale and distribution thereof, as may be necessary or requisite to enable the board to ascertain and estimate the requirements and works necessary for the purpose of the district, and the probable cost and to make a report."

[23]A map of the basin showing the boundaries is Defendant's Exhibit N.

rich farmland.[24] At the peak of the flood, 100 percent of divisions 3, 5 and 6, 56 percent of division 4 and 28 percent of division 7 were under water.

Because of the recurrent floods, very few people live in the District. At the present time, there are 77 men, women and children living in the District. Many of the families are permanent or semi-permanent employees of Westlake Farms, Inc., which owns approximately 15,000 acres of land on the west side of the Basin. For example, 38 people reside at that company's Nevada Avenue Labor Camp; 6, at its Kettleman City Labor Camp; 10, at its headquarters complex; and 12, at its South Ranch headquarters, making a total of 66 people affiliated with Westlake Farms, Inc. living in the District. In addition, 2 people live at the El Rico headquarters of the J. G. Boswell Company and 4 at that company's Homeland headquarters. Four people live at the Southlake Farms headquarters, and Lawrence Ellison, one of the plaintiffs in this action, lives in a home owned by plaintiff Salyer Land Company at its North Central headquarters.[25]

Among these people, only the members of the Howe families, who are the owners of Westlake Farms, a corporation, own land in the District.

There are 307 landowners in the District. The pattern of land ownership varies greatly in different por-

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[24]A photograph of the basin showing the flooded area on October 5, 1969, is Defendant's Exhibit O, printed following page 88 of the Appendix.

[25]A map showing the location of place indicated, except Westlake Farms South Lake headquarters is attached to Defendant's Exhibit P, which is printed in the Appendix.

tions of the District. For example, in the lower portions the land is held, for the most part, in sizable ownerships. However, in the southeastern quadrant, in an area sometimes referred to as to the Homeland District, there are many small ownerships. This pattern is due to the fact that some years ago there was some speculation in oil drilling in the area and small ownerships were sold by the promoters of this venture. These small holdings are all leased for farming to larger operators, who usually vote these smaller holdings by proxy.[36]

The District provides no public services, such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed and operated by a municipal body. There are no towns, shops, hospitals, fire departments, police, buses, trains or other facilities of a type designed to improve the quality of life within the boundaries of a governmental entity.

The Tulare Lake Basin Water Storage District was divided into eleven divisions, and a Director was elected for each division by its landowners, with each landowner receiving one vote for each $100 worth of his land. It is these divisions that the three-judge court determined to be improper and which will be corrected by that court.

The District has adopted four projects since its formation in 1926. Each of the projects was limited to

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[36]Defendant's Exhibit Q is a schedule showing the relative number of land holdings. It is printed in the Appendix following page 88.

the District's primary function of water storage and distribution. Each project involved a multi-million dollar expenditure to be paid by assessments on the land benefited.[27]

The Question Before the Court.

Did the State of California act within constitutional limits when it granted the franchise in water storage districts only to landowners and weighed each landowner's vote in proportion to the value of the land owned by him?

[27]Each District project is described in the Appendix beginning at page 75.

ARGUMENT.

The Appellants contend that the classification enacted by the California legislature as to who shall be permitted to vote in a water storage district general election is unconstitutional for two reasons. First, it is contended that the classification discriminates unconstitutionally against non-landowning residents in the District and against lessees of land within the District. Second, it is contended that even if it should be deemed constitutionally permissible to limit the franchise to landowners, it is unconstitutional to permit one landowner to cast more ballots than another because he owns land worth more than the latter.

The Appellants base their two contentions upon the one man, one vote decisions of this Court, particularly those which have struck down statutes which conditioned the right to vote upon the ownership of property, *e.g., Kramer v. Union Free School Dist.*, 395 U.S. 621 (1969); *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970). However, Appellants do not mention that in each of these decisions the Court has emphasized that the election in question was concerned with matters of general concern to the populace as a whole and that all citizens, not just property owners, would be required to bear the cost of the governmental function in question. The Court found no overriding reasons which established that the legitimate interests of the state would be furthered by limiting the electorate to property owners. Therefore the statutes in question were held unconstitutional. On the other hand, in these decisions, the Court has recognized that there may be areas in which a state might limit the franchise to those "primarily interested" or "primarily affected" by a given set of circumstances (*Kramer, supra*, p. 632). In *Hadley v.*

Junior College District, 397 U.S. 50, at page 54, the Court stated:

> "It is of course possible that there might be some case in which a State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with Reynolds, supra, might not be required . . ."

and at page 55:

> "And a State may, in certain cases, limit the right to vote to a particular group or class of people. As we said before, 'viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the constitution to prevent experimentation.' "

The question then is whether the State of California acted within constitutional limits in granting the franchise in water storage district elections only to landowners, and further, weighing a landowner's vote in proportion to the value of the land owned by him. The Supreme Court of Califonia ruled on this question in 1923, shortly after the enactment of the water storage district act. In *Tarpey v. McClure*, 190 Cal. 593 (1923), that Court upheld the constitutionality of the Act, stating at page 606:

> "By this and like provisions, the legislature is not dealing with elections, with suffrage, or with the ballot, within the meaning of the constitution and the election laws of the state. The formation of this and similar districts is a function pertaining

purely to the legislative branch of the government. Wherefore it may do so by giving such persons as it may think best an opportunity to be heard . . ."[28]

The directors of a California water storage district, contrary to the statements in Appellants' brief, exercise virtually no governmental power whatsoever. Except for administrative and housekeeping chores, all they can do is investigate and report on the feasibility and cost of a district project.[29] They have no power to legislate. They are not comparable to elected officials in the typical unit of local government such as members of a city council, school board, county board of supervisors in whom is invested a considerable amount of governmental power to act in areas of general concern to all citizens and who have the power to levy taxes, make assessments or even enact criminal statutes. Under such circumstances, this Court has held that the one man-one vote cases do not apply. *Sailors v. Board of Education*, 387 U.S. 105 (1967).

In *Kramer*, this Court held that a statutory classification which disenfranchises persons otherwise qualified to vote must meet the following tests: (1) The classification must be necessary to promote a "compelling state interest" and (2) The statute must be drawn with such precision that a citizen having a direct and primary interest in the matter voted upon is not excluded. Following *Kramer*, the three-judge court in this case held unanimously that California had a compel-

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[28]Other California cases also support the reasoning of *Tarpey v. McClure. Barber v. Galloway*, 195 Cal. 373. *People v. Reclamation Dist. No. 551*, 117 Cal. 114, 123-124.

[29]California Water Code, Section 42200, as amended 1969, quoted footnote 22, *supra*.

ling state interest in the management of its water, and a majority held that it was proper for the State to limit the franchise in water storage district general elections to landowners, since they are the ones directly involved who bear the costs.[30]

A recent California case discussed *Kramer* and held that voter classifications similar to those attacked here are necessary to promote a compelling state interest and did not exclude citizens having a direct and primary interest in the vote. In the California case, which is entitled *Schindler v. Palo Verde Irrigation Dist.*, 1 Cal.App.3d 831 (1969), the Court said:

> "The state clearly has a compelling interest in the reclamation of waste lands through flood protection, drainage and irrigation works. (See *People v. Sacramento Drainage Dist.*, 155 Cal. 373, 379-381 [103 P. 297].) In many circumstances, such as undoubtedly existed in Palo Verde Valley in 1923, the lands to be reclaimed are virtually uninhabited. The grant of election franchise to landowners, resident and nonresident, corporate and individual, is necessary to 'further a compelling state interest.' Absent the voting qualification provided by the Act, it is doubtful that the District could have been formed or functioned. The activities of the District no doubt affect the economy of the area and to that extent District affairs may be of interest to all inhabitants irrespective of land ownership, but such general interest, standing alone, cannot be said to constitute, as a matter of law, a direct, primary and substantial interest entitling all inhabitants to

[30]California Water Code.

vote. Such general economic interest is indirect, not primary and substantial. (See *Atchison etc. Ry. Co. v. Kings County Water Dist.*, 47 Cal. 2d 140, 144-145 [302 P. 2d 1].)

"Since the benefits and burdens accrue to each landowner in proportion to the extent of land owned, the grant of franchise in proportion to the assessed value of land ownership fairly distributes voting influence among those primarily and directly interested in direct proportion to the stake each has in the District. We conclude that the existing method of allocating voting rights among land owners satisfies the constitutional standards prescribed by *Kramer*.

"In view of the conclusion we have reached, it is unnecessary to consider in detail the alternative voting rights demanded by plaintiff. Absent constitutional infirmity in the existing statute, there is no justification for judicial fashioning of the alternative rights demanded. * * *"

Other states agree with California. In *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 490 P.2d 1069 (1971), the Supreme Court of Wyoming held that the one-man, one-vote concept of equal protection will not be applied to entities such as watershed improvement districts, soil conservation districts, and irrigation districts. In *Wallegham v. Thompson*, 185 N.W.2d 649 (1971), the Supreme Court of North Dakota held that a statutory formula for voting rights, in proportion to an anticipated assessment to which land in a drainage district may be subjected, fairly and properly distributed voting influence among the landowners, as those "landowners who own more land will be burdened more and have more at stake."

In *Hebert v. Police Jury of Parish of Vermilion, La.*, 245 So.2d 349, the Supreme Court of Louisiana held that it was proper in a bond election involving purely local roads to limit participation in the election to property owners whose property would benefit and who would pay for the roads.

The State of California Acted Permissibly When It Excluded Residents of the District From the Electorate.

Appellee suggests that it is entirely proper for the legislature of the State of California to enact a law which provides a method whereby a group of landowners may band together to improve the management of water which they receive from a common source. They are *directly* affected by and concerned with bringing water to their land. The interest of a non-landowning resident in such affairs is little more than that of a spectator. Moreover, in an area such as the Tulare Lake Basin there are practically no residents at all. Seventy-seven men, women and children reside within the boundaries of the Tulare Lake Basin Water Storage District, which encompasses 193,000 acres of land. Sixty-six of them either work for or are affiliated with Westlake Farms, Inc. which owns approximately 15,000 acres on the west side of the Basin.[21]

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[21]Defendant's Exhibit P, which is at page 85 of the Appendix lists the residents and shows where they reside.

The reason for this sparse number of inhabitants is due to the fact that the Basin is subject to recurrent flooding. For example, a major flood occurred in 1969 which inundated over 88,000 acres of farm land.[22] Because of the fact that the Basin is actually a sump, having no outlet, and the land of the Basin is a tight, impermeable clay, which prevents water from percolating through it, the flood waters remain on the land until they either evaporate or are used for irrigation on the surrounding farm land. As a consequence of the 1969 flood, which was one of the largest in history, some of the land remained under water until the summer of 1971, representing a loss of three years of crops for the area affected. In this vast area of practically no inhabitants, it is absurd to suggest that the non-landowning residents, most of whom live many miles from each other, have the same interest in deciding whether a water storage district shall be formed as do the landowners within the area.

The State of California Acted Permissibly in Excluding Lessees From the Electorate.

Justice Browning dissented, in part, from the majority Opinion herein, which, although silent on the point, had the effect of affirming the exclusion of lessees from the electorate. Justice Browning would permit lessees, as well as landowners, to vote, but not mere residents, and he would not permit any vote to be weighted by the value of land owned or leased. How-

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[22]Appendix, Page 84.

ever plausible such a notion appears on the surface, it would be a nightmare to administer. Neither Justice Browning nor the Appellants make any distinction between one who leases 1,000 acres of land for a ten-year term and one who leases one acre of land under a tenancy at will. Presumably each, as a lessee of land, would be entitled to cast one ballot. If this is correct, there would be nothing to prohibit a large landowner from leasing his land to as many friends as he needed to control an election. These lessees in turn could contract with a competent operator, such as the actual lessee in present-day operations in the Tulare Lake Basin, to farm the land that they had leased at least until after they had voted at the election. Such a situation is fraught with the potential of too much mischief to insure any true stability in the electoral process. Since the term "lessee" is far from explicit, it is altogether reasonable that the California state legislature did not choose to grant the franchise to lessees.

However, California does recognize that there may be a divisible interest in land. A purchaser of land under an installment contract may cast one half of the vote allotted to such land if (a) the land is separately assessed on the county assessment roll; (b) a copy of the contract is filed with the secretary at least thirty days prior to the date of the election; and (c) the purchaser is not delinquent for more than six months in the payment of any sums required to be paid under the contract.[25]

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[25]California Water Code, Section 41006.

If the Franchise Is Limited to Landowners, It Is Permissible to Permit Each Landowner to Cast One Vote for Each $100 Worth of Property Owned by Him.

The next question is whether it is constitutionally permissible to permit each landowner to cast one vote for each $100 worth of property owned by him. Before discussing this question, Appellee suggests that such cases as *Gray v. Sanders*, 372 U.S. 368 (1963), and *Reynolds v. Sims*, 377 U.S. 533 (1964), cited on page 17 of Appellants' brief, which dealt with situations in which one person's vote was debased in relation to another's, usually by the manner in which an area of government was divided into districts, are no longer in point in this case. Based on the authority of these decisions, the lower court ordered the district ". . . to submit a plan to correct this malapportionment within six months of the date this decision becomes final."[34] The District did not appeal from this position of the judgment, and when this judgment is final, the District will be redivisioned in such a fashion that each vote for $100 of assessed valuation will have the same voting power.

The Appellants have excised quotations from the series of one man, one vote cases which they feel compel a reversal of the decision of this case. They pose the issue of weighted voting by reference to two recent state court decisions, stating at page 24 of their brief: "It is not possible to reconcile the reasoning and result in *Toltec*[35] with the reasoning and result in *Burrey*, . . ." This statement fairly tenders the issue.

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[34]Appendix, Page 107.

[35]See Page 15, *supra*, where Toltec is cited along with cases from other states.

The majority of the lower court disposed of *Burrey* by stating:

> "It [the District] performs no governmental functions of general concern to the populace and provides no service to the general public such as found by the court in *Burrey v. Embarcadero Municipal Improvement District* recently decided by the Supreme Court of California."[36]

Toltec, on the other hand, involved a limited purpose district, such as a water storage district, which does not concern itself with matters of general interest to all citizens. Therefore, analogizing to shareholders voting in a private corporation, the Supreme Court of Wyoming ruled that in such limited purpose districts, it is altogether proper for the legislature to permit the landowners to vote in proportion to their acreage.

The legislatures of most western states have authorized the creation of public and quasi-public districts dealing with water development, reclamation of land, drainage, soil conservation, and the like, and often the legislatures have permitted voting participation in such special purpose entities on the basis of one's ownership of land, the so-called "weighted vote." The question then is, assuming that it is constitutionally permissible to limit the franchise in water storage district elections to landowners, does the Equal Protection Clause prohibit weighted voting based upon land ownership?

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[36]In *Burrey v. Embarcadero Municipal Improvement District*, 5 Cal. 3d 671 (1971) the Supreme Court of California said that the government unit there under consideration was "* * * a small but growing city and lacks few of the powers normally held by municipal governments."

A fortiori, the Appellee contends that, if the state can permit a holder of title to land, even a corporation, to vote in a water storage district, it is within the power of the state in the exercise of its own judgment to determine that the objectives which it seeks to achieve can best be accomplished by weighted voting.

The majority below upheld weighted voting because ". . . the benefits and burdens to each landowner in the District are in proportion to the assessed value of the land, so permitting voting in the same proportion fairly distributes the voting influence."

Justice Browning judged the matter differently, stating:

> "Defendant has identified no compelling state interest in weighted voting in water storage district elections.
>
> "The statute itself weakens the contention that landowners would decline to participate in the formation of water storage district if each vote weighed equally. A majority of the *number* of landowners is normally required to form such a district (California Water Code Section 39400), and a majority of the *number* of landowners voting is required to approve a district project. California Water Code, Section 42550.[37]
>
> "Neither can it be said that the state's interest in intelligent and responsible elections is served by weighted voting. There is nothing in the record

[37]Justice Browning was not precise in stating that a majority of the number of landowners is required to form a district. The landowners must also own a majority of value of the land. California Water Code Section 39400 states that a majority in number of the holders to title to land irrigated or susceptible to irrigation from a common source by the same system of works who are also holders of title to a majority in value of the land may propose the formation of the district. Also 500 landowners owning 10 percent in value of the land may propose a district.

to support the assumption that a small landowner is less likely than a large one to possess the information and understanding of water development problems that is requisite to intelligent and responsible voting on the affairs of a water storage district. *Cf., Harper v. Virginia Board of Elections,* 383 U.S. 663, 688 (1966). And the landowner's interest in finding and implementing solutions to these problems is no less acute because his operation may be of greater economic consequence to him; and is small. Efficient production from his smaller acreage the lesser absolute share of the cost of district projects he may be required to bear may impose a greater burden."

With all due respect to the analysis of Justice Browning, the Appellee suggests that the California legislature could rationally and properly draw a different conclusion from the facts.

There are 307 landowners in the District. The pattern of land ownership varies greatly in different portions of the District. For example, in the lower portions of the Basin, the land is held, for the most part, in sizable ownerships. However, in the southeastern quadrant, in an area sometimes referred to as the Homeland District, there are many small ownerships. This pattern is due to the fact that some years ago there was some speculation in oil drilling in the area and small ownerships were sold by the promoters of this venture. These small holdings are all leased for farming to larger operators, who usually vote these small holdings by proxy.[38] One hundred eighty-nine landowners, representing 2.34

[38]Appendix, Page 85, Defendant's Exhibit Q.

percent of the acreage in the Basin, represent an absolute majority of landowners.

Furthermore, as the State legislature knows, district projects are apt to be multi-million dollar undertakings. For example, General District Project No. 4 involved the construction by the District of two laterals from the Basin to the California State Aqueduct. The capital cost of the laterals was approximately $2,500,000.[39]

Some facts concerning the relative cost of the Project to the three landowners, Thomas J. Amos, Ada Hornbeak, and Rose Catanz, mentioned on page 16 of the Appellants' brief as having only one vote compared with the position of the J. G. Boswell Company which cast 34,825 votes for Project 4, illustrate the reason why it was altogether proper for the California legislature to provide for weighted voting in water storage district elections. The foregoing allocation of votes was based upon the July 11, 1967 assessment roll, the one applicable to the Project 4 special election.[40]

The assessed valuation of Rose Catanz' 2½ acres of land was $10.00; of Thomas J. Amos' one-quarter of an acre, $20.00; and of Ada Hornbeak's eight-tenths of an acre, $60.00. Therefore, they were each entitled to cast one vote at the Project 4 election. The assessed valuation of the 61,665.54 acres of land owned by the J. G. Boswell Company was $3,782,-220.00, entitling that Company to cast 37,825 votes.

However, the assessment commissioners determined that the benefits of Project 4 would be uniform as to all 188,514.46 acres of land in the District affected by Project 4; and therefore assessed the capital cost of

[39]Appendix, Page 8.

[40]Defendant's Exhibit M, not included in the Appendix.

that project equally as to all of the acreage. As a consequence, each acre of land has to bear $13.26 of cost of the $2,500,000.00 capital expenditure for Project 4.

Therefore, Thomas J. Amos' share of the cost of Project 4 is $3.32; Ada Hornbeak's, $10.61; Rose Catanz', $33.15; and the J. G. Boswell Company's, $817,685.06.

Given these circumstances, the California legislature could well conclude that J. G. Boswell Company has a much greater stake in a district project than Thomas J. Amos, and that it is altogether proper that that Company cast 37,825 votes to Thomas J. Amos' one, where such a project would cost the Boswell Company $817,685.00 to his $3.32.

Therefore, while the California state legislature by weighted voting has made it impossible for a majority in numbers of landowners to impose a district project against the wishes of a majority in value of the land, it has also protected the small landowners on the downside by providing that a majority in *value* cannot enact a District project over the objections of a majority in *number* of the landowners.[41] This type of electoral scheme for District Projects, which is the only means by which the District can accomplish its goals, adequately protects the interests of the small landowners by giving them the power to prevent the imposition upon them of burdensome assessments.[42]

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[41]California Water Code, Sections 42355-42550.

[42]As noted above, 189 landowners representing 2.34 percent of the acreage in the District represent an absolute majority of the landowners. In this connection it should be noted that while the J. G. Boswell Company cast 37,825 votes for General Project 4 on Official Ballot "A" [Deft. Ex. R] while Thomas J. Amos was only casting 1 vote on Official Ballot "A", both the J. G.

By the same token, this voting procedure recognizes that, since these projects are for the benefit of the lands in the District and will be paid for by each landowner in proportion to the value of his land, it is essential that a majority in value agree that a project should be adopted. Otherwise, the large landowners could not be induced to join in the formation of a water storage district. Stated differently, it would be rather absurd to assume that the J. G. Boswell Company would be willing to participate in the affairs of the Tulare Lake Basin Water Storage District if Thomas J. Amos and 188 of his friends could at their whim visit a $817,685.00 assessment upon that Company.

The plain truth is that contrary to Justice Browning's statement, Thomas J. Amos does not have the same interest in the efficient management of water as does the J. G. Boswell Company. However, there is no gauge by which to measure the degree of interest or understanding of water development problems between landowners. On the other hand, the burden of paying for the cost of district projects is in proportion to the value of one's land and can be determined with precision. Therefore, as the majority said, "permitting voting in the same proportion fairly distributes the voting influence."

In addition to the economic realities which justify weighted voting based upon apportioning the vote in proportion to the burden, there are other reasons which dictate that weighted voting is the only practical way of distributing the franchise. For example, if one would

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Boswell Company and Thomas J. Amos only cast 1 vote on Official Ballot "B" [Deft. Ex. S]. With respect to Official Ballot "B" both J. G. Boswell and Mr. Amos had the same voting strength.

accept the Appellants' argument that landowner voting is proper, but each landowner should have the same voting power, then, in the Tulare Lake Basin Water Storage District as it exists today, whoever holds the proxies of the collection of small landowners in the Homeland District who came into land ownership through speculating in oil, can effectively control the District elections.

No doubt such a situation would be intolerable to some of the larger landowners, quite possibly even the Salyer Land Company. If so, there would be nothing to prohibit that Company or any landowner from selling ten dollars worth of land to as many relatives, employees, or other captive landowners as he felt necessary to win an election. His neighbor, fearful of such electoral tyranny, could offer more people land in five dollar units, with the process repeated until land ownership in the Tulare Lake Basin would be in such small units that they couldn't be seen by the naked eye.

The fact that such an absurd situation as that noted above would be possible in the absence of weighted landowner voting establishes the good judgment of the California legislature in drawing the Water Storage District Act the way it did. One vote for each $100 worth of land is a fixed measure of voting power. It is the same whether the land is leased under a long or short-term lease; whether the land is owned by a corporation, partnership or an individual; whether the owner is actively interested in District affairs or entirely indifferent to them.

Finally, the experience of this District, where all but one of its projects were enacted by a unanimous electorate, indicates dramatically that multi-million dollar water projects are not apt to be undertaken, in the absence of a general consensus of all landowners.

One good test of an electoral system is how it works in actual operation. The projects of the Tulare Lake Basin Water Storage District have accomplished a great deal toward an improvement in the management of water for the landowners in the District. The objective sought to be accomplished by the legislature have been achieved under the Water Storage District Act. Therefore, limiting the franchise to landowners, who vote in proportion to the value of their land, has indeed furthered a compelling state interest.

Conclusion.

Following the principles established by this Court in *Sailors and Kramer,* by the California court in *Schindler* and *Burrey,* by the Nebraska court in *Toltec,* by the North Dakota court in *Wallegham,* and by the Louisiana court in *Hebert,* it is clear that California Water Code Sections 41000 and 41001, which permit only landowners to vote and give them one vote for each $100 of assessed valuation, do not violate the equal protection of law guaranteed by the Fourteenth Amendment of the Constitution insofar as applied to elections of the Tulare Lake Basin Water Storage District. Accordingly, and as stated in *Schindler,*

> "Absent constitutional infirmity in the existing statute, there is no justification for judicial fashioning of the alternative rights demanded."

September 1, 1972.

Respectfully submitted,

ROBERT M. NEWELL,
ERNEST M. CLARK, JR.,
Counsel for Appellee.

Service of the within and receipt of a copy thereof is hereby admitted this.....14.....day of September, A.D. 1972.

Proof of Service Enclosed

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

Statutes

IN THE

Supreme Court of the United States

October Term, 1972
No. 71-1456

SALYER LAND COMPANY, a California corporation, C. EVERETTE SALYER; FRED SALYER; LAWRENCE ELLISON; and HAROLD SHAWL, *Appellants,*

vs.

TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district, *Appellee.*

On Appeal From the United States District Court for the Eastern District of California.

Brief of Amicus Curiae, Irrigation Districts Association of California.

I.
STATEMENT OF THE CASE.

In this action, appellants seek to overthrow the landowner voting qualifications of the District through application of the "one man, one vote" doctrine. In essence, appellants' action seeks to take the management of District affairs away from the 307 landowners who own its 193,000 acres, are subject to the jurisdiction and governing power of the District, and give this control to the registered voters among the 77 men, women and children who live in the District who are not subjects of its powers. Of these 77, only members of one family own land within the District. (A. 85.)

II.

THE INTEREST OF THE IRRIGATION DISTRICTS ASSOCIATION OF CALIFORNIA.

The Irrigation Districts Association of California is an association of over 250 public districts who distribute for irrigation, municipal and domestic use over 75% of the water in the State of California. Many of the public districts who distribute water for agricultural purposes operate under California statutes, which, like the appellee, use landownership as a voting qualification. Consequently, any attack on a long standing workable method of providing voting control to the persons who are directly affected by the operation of a district is of great concern to the Association and its members.

Within California there are numerous types of districts which are formed to provide various types of services. Some districts, such as community services districts[1] are formed to provide essentially the same services, and to perform the same functions as a city. They have broad general powers which affect all of the persons living within their boundaries, including the power to levy taxes on property located therein.

In contrast with this type of district, the members of the Irrigation Districts Association of California are essentially districts of very limited powers. Their primary function is to deliver water. They do not have the power to tax, but only to assess property for the benefits that property has received through district op-

[1]California Government Code, § 61000.

erations. These water districts throughout the State vary considerably as to their size and population. Many of them of large size have few, if any, inhabitants actually living within their boundaries. The Dudley Ridge Water District, for example, formed under Division 13 of the Water Code of the State of California, and located in Kings County, contains 29,937 acres. Its only source of water for irrigation purposes is from the State Project. The District acquires the water from the State, and distributes it to the lands within its boundaries. Without such supply, the land would be almost totally unproductive. Voting is by landowners.

The Dudley Ridge Water District contains 373 parcels of land owned by 213 different owners. In the entire District, there are only six residents, all members of one family—five of whom are old enough to register to vote, and two of them, a husband and wife, own land within the District. Of the five members on the Board of Directors, all are landowners, but only one resides within its boundaries.

In contrast to landowner voting districts, there are water districts within the State whose primary function is to distribute water within metropolitan areas for domestic and municipal purposes. These districts are formed under different acts more suited to the needs of the people they serve, and use a general electorate method of voting, rather than landowner qualifications. Within the State, as the law is presently constituted, there are acts such as the California Water District

Act[1] and the Water Storage District Act,[2] which provide for landowner qualifications, and are well suited to districts engaged in delivering water for agricultural purposes. In contrast, there are acts such as the County Water District Act,[3] which have popular voting, and are well suited to districts engaged in municipal or domestic water deliveries, often with attendant sewer service.

It is the policy of the Association to maintain for its member districts sufficient flexibility in the laws of the State of California so that in situations where the primary function of a district is to benefit the land within its boundaries by furnishing a supply of irrigation water to that land, that the control of the district's functions remains with the people who are directly and primarily affected by the district activities—that is, the persons who own the land for whose benefit the district operates. If such flexibility is not maintained under the California statutes, then in areas such as the Dudley Ridge Water District, and the appellee water district, it would be difficult, if not impossible, for the districts to properly function if the voting rights were taken away from the people directly affected by the districts' operations, and placed in the hands of persons who have little or no interest therein merely because they are residents within the district boundaries.

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[1]California Water Code, Div. 13.
[2]California Water Code, Div. 14.
[3]California Water Code, Div. 12.

III.

SUMMARY OF ARGUMENT.

Until the cases decided by this Court in the June 1971 Term, the application of the Equal Protection Clause through the "one man, one vote" doctrine was being expanded in every decision. The later cases have eased the strict pronouncements of the earlier ones, and as the decisions now stand, greater flexibility is allowed in local government to meet local needs.

When the facts of this case are exposed to the current test that "particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality,"[1] and that there must be a "valid relation to the interest of (the) group in the subject matter of the election,"[2] property qualifications and weighted voting should both be upheld by this Court.

Even under the stricter tests of the earlier cases, these voting processes should stand. The appellee District is not a governmental agency of general powers and purposes. Its function, like its powers, are limited to providing a benefit for land by furnishing water for irrigation of agricultural crops. The owners of the land who receive the benefits pay the district for providing the water, and the necessary works for delivery in proportion to the amount of benefit they receive.

The landowners are the only people directly governed by the District and subject to its jurisdiction. The impact of the District on persons other than landowners is indirect only, and flows through the land-

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[1] *Abate v. Mundt*, 403 U.S. 182 at 185.
[2] *Gordon v. Lance*, 403 U.S. 1 at 4.

owners before any effect is felt. The 77 residents of the District are only affected by District operations as employees of landowners, and such effects as they feel are the same as non-resident employees. The residents are not governed by, nor in the jurisdiction of the District. They do not constitute a class who need or should have the right to control District operations.

The District has a more direct impact on lessees of landowners than on residents, but here again, the impact is derivative from the landowner, is temporary in nature, and is based on a contract in which certain rights of landowners may be exercised by the tenant. If in negotiating that contract, the lessee desires the right to vote, and the landlord is willing to grant it, proxy voting is allowed. If the lessee fails to pay a water charge it becomes a lien on the land of the lessor, and must be paid by him.

The voting among landowners is weighted in accordance with the burden they bear in paying assessments. Those who must pay more for the District's benefits have a larger voice than those who pay less. This type of weighting is common in Water Companies, and other corporations and constitutes a reasonable and fair standard of allocating the votes among the landowners.

This Court should not use "one man, one vote" to take the right to control the operation of the District away from the 307 landowners who are directly and primarily interested therein, and turn that control over to those over 18 among the 77 men, women and children who live within the District, but are unaffected by it, or subject to its jurisdiction.

IV.

ARGUMENT.

A. Introduction.

Appellants seek in this proceeding through the application of the "one man, one vote" rule to deprive the landowners within the District, their right of franchise, and to transfer that right to the persons who live within the District boundaries. Their attack on the voting system is twofold. First, they contend that the Equal Protection Clause strikes down landownership as a qualification for voting. As a corollary, they claim that it invalidates weighting the voting on an assessed value basis so that an owner whose land is assessed more than his neighbor has a larger voice in voting on District affairs.

We, as *amicus curiae*, contend that there is a "compelling State interest" to allow landowner qualifications for special districts with limited powers, whose primary function is to provide a benefit for the land served, and that weighting the votes cast in accordance with the share paid for those benefits received is a reasonable classification of the voting power.

B. The Tulare Lake Basin Water Storage District Is a District of Limited Power Whose Function Is to Provide a Benefit for the Lands Within Its Boundaries.

Appellee District was formed under the Water Storage District Act of California.[1] Under the provisions of this Act such a district can only be formed upon a petition of the landowners.[2] The petition is filed with the Department of Water Resources of the State.

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[1]Div. 14 of the California Water Code.

[2]California Water Code, § 39400.

After investigation and hearing by the Department an election is called to determine whether the district should be formed.[1] As presently constituted, the law allows the determination as to whether or not the district should be formed to be established by the landowners who cast one vote for each $100.00 of the assessed value of his land, exclusive of improvements located thereon.[2] Once formed, the district has the power to "acquire, improve and operate the necessary works for the storage and distribution of water, and any drainage or reclamation works connected therewith."[3] In addition thereto, the district may provide for the generation and distribution of hydroelectric energy incidental to water storage and distribution.[4] Essentially, except to carry out these powers and purposes, the district has no other general powers.

Insofar as its revenues are concerned, the district may fix tolls or charges for the use of water and "collect the same from all persons receiving the benefit of the water or other services. The tolls and charges shall be proportional, as nearly as practicable, to the services rendered."[5]

The district further has the power to levy assessments which are apportioned "in accordance with the benefits that will accrue to each tract of land held in separate ownership by reason of the expenditures of the money and the completion of the project . . ."[6] It should be noted that the district does not have the general power

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[1]California Water Code, § 39900.

[2]California Water Code, § 41001.

[3]California Water Code, § 43000.

[4]California Water Code, § 43025 (A power not exercised by appellee.)

[5]California Water Code, § 43006.

[6]California Water Code, § 46176.

of taxation, but only the power to assess for benefits conferred. Land that is not benefited by the district's operations upon petition may be excluded therefrom.[1]

C. The Decisions of This Court on the "One Man, One Vote" Doctrine.

1. The Older Decisions.

The late Mr. Justice Harlan in his separate opinion in the recent case of *Whitcomb v. Chavis*[2] characterized the early line of cases which established the "one man, one vote" doctrine as reflecting the "deep *personal* commitments by some members of the Court to the principles of pure majoritarian democracy." Whether the early decisions are based upon this principle or not, it is clear that they established a doctrine that applied the "one man, one vote" principle to fields that had theretofore never felt its impact.

In *Baker v. Carr*[3] the doctrine was first applied to state legislatures, and reapportionment was required in order to equalize voting rights on the "one man, one vote" theory.

In *Reynolds v. Sims*,[4] and *Lucas v. Forty-Fourth General Assembly of Colorado*,[5] the doctrine was extended so as to strike down the long standing principle of apportionment of state senates by area rather than population.

In *Avery v. Midland County, Texas*[6] the doctrine was applied to county governing bodies.

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[1]California Water Code, § 48029.

[2]403 U.S. 124.

[3]82 S.Ct. 691.

[4]377 U.S. 533.

[5]377 U.S. 713.

[6]390 U.S. 474.

In *Kramer v. Union Free School District #15*[1] it was applied to a school district.

In *Cipriano v. City of Houma*[2] "one man, one vote" was applied to a city bond election.

Hadley v. Junior College District[3] extended the doctrine to a junior college district.

City of Phoenix v. Kolodziejski[4] applied the doctrine to revenue bonds of a city based on property qualification.

As may be seen from the foregoing general outline, the Court applied the principle of "one man, one vote" not only to state legislative bodies, but also applied the doctrine to municipalities and local districts. In such instance, however, where the doctrine was applied to local districts, the Court pointed out that the district involved had a general impact on all of the persons residing within its boundaries, and that there was no rational reason in the cases presented to deprive those upon whom the district acted of their right to voice their measure of control over those activities by casting a vote. Even though the Court was embarked in the early cases in expanding the doctrine, saving language was placed in all the decisions so that too wide construction of the doctrine would not hamper local, factual situations.

In *Avery*, the Court struck down an argument that the doctrine should not apply to local governments,

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[1]395 U.S. 621.
[2]395 U.S. 701.
[3]397 U.S. 50.
[4]399 U.S. 204.

noting that a county had broad governmental functions, including the right to tax, and thus:

> ". . . does have power to make a large number of decisions having a broad range of impacts on all the citizens of the county."[1]

The Court limited its decision, however, by stating:

> "Our decision today is only that the Constitution imposes one ground rule for the development of arrangements of local government: a requirement that *units with general governmental powers* over an entire geographic area not be apportioned among single-member districts of substantially unequal population." (emphasis added.)[2]

and

> ". . . the Constitution and this Court are not roadblocks in the path of innovation, experiment, and development among units of local government."[3]

Kramer applied the doctrine to a school district election where state law restricted voting to persons who were owners or lessors of real property within the district, or parents of children enrolled in local, public schools. In the decision, the Court spent a great deal of time in describing the acts performed by the district on matters having a general impact upon the electorate at large. The Court agreed with the argument of the appellant, stating:

> "All members of the community have an interest in the quality and structure of public education, appellant says, and he urges that 'the decisions taken by local boards . . . may have grave consequences to the entire population.' "[4]

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[1]390 U.S. 483.
[2]390 U.S. 485.
[3]390 U.S. 485.
[4]395 U.S. 630.

Again, however, the Court placed saving language in the decision, stating:

> "We need express no opinion as to whether the State in some circumstances might limit the exercise of the franchise to those 'primarily interested' or 'primarily affected.' Of course, we therefore do not reach the issue of whether these particular elections are of the type in which the franchise may be so limited."[1]

Thus, *Kramer*, again left open the question as to whether the doctrine should be applied to all levels of local government.

Cipriano was decided the same day as *Kramer*, and a property qualification for a city bond issue for municipal improvements was struck down. The Court noted that all of the users of utilities pay the utility bills which would be used to pay the revenue bonds which were being issued, and thus, determined that the property owners felt no greater impact than the population as a whole. The Court stated:

> "The revenue bonds are to be paid only from the operations of the utilities; they are not financed in any way by property tax revenue. Property owners, like nonproperty owners, use the utilities and pay the rates, however, the impact of the revenue bond issue on them is unconnected to their status as property taxpayers. Indeed, the benefits and burdens of the bond issue fall indiscriminately on property owner and nonproperty owner alike."[2]

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[1]395 U.S. 632.
[2]395 U.S. 705.

In view of the foregoing, the Court unanimously determined that there was no "rational basis" for limiting the franchise to the landowners. Again, however, the Court placed saving language in the decision by its footnote, stating:

> "As in Kramer v. Union Free School District No. 15, supra, we find it unnecessary to decide whether a State might, in some circumstances, limit the franchise to those 'primarily interested.' "[1]

In *Hadley* in applying the doctrine, the Court, as it did in *Avery*, discussed the function of the district in some detail, and stated:

> "We feel that these powers, while not fully as broad as those of the Midland County Commissioners, certainly show that the trustees perform important governmental functions within the districts, and we think these powers are general enough and have sufficient impact throughout the district to justify the conclusion that the principle which we applied in Avery should also be applied here."[2]

Thus, the Court again reiterated as it did in *Avery* that in order to apply the "one man, one vote" principle, that the board involved in the election must have powers general enough to have sufficient impact on the entire electorate to justify the application of the rule. The Court established as the general rule that whenever there is a state or local election to select persons to perform governmental functions, that "one man, one

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[1]Footnote No. 5 at 395 U.S. 704.
[2]397 U.S. 52.

vote" shall apply. It modified its general rule, however, by stating:

> "It is of course possible that there might be some case in which a State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately effect different groups that a popular election in compliance with Reynolds, supra, might not be required . . ."[1]

and again:

> "And a State may, in certain cases, limit the right to vote to a particular group or class of people. As we said before, '(v)iable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation.' "[2]

It is interesting to note that in *Hadley*, the majority did not cite either *Kramer* or *Cipriano*.

The *Phoenix* case extended the doctrine set out in *Cipriano* where revenue bonds were involved, to general obligation bonds of a city. The Court concluded:

> "The differences between the interests of property owners and the interests of nonproperty owners are not sufficiently substantial to justify excluding the latter from the franchise . . . Placing such power in property owners alone can be justified only by some overriding interest of those owners which the State is entitled to recognize."[3]

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[1] 397 U.S. 54.
[2] 397 U.S. 55.
[3] 399 U.S. 205.

The *Phoenix* case was decided on a five to three vote with the three dissenters noting that the property owner classification was a rational public policy in view of the fact that the bonds were a lien upon real property and were paid by assessments against the real property.

2. The Tests Applied in the Older Decisions.

In order to ascertain whether or not the action of the state was violative of the Equal Protection Clause, the Court established certain tests that it applied to the factual situation at hand. During the years that the early cases evolved, the standard against which the state action was measured seemed to grow more stringent. In *Wesberry v. Saunders*[1] the Court recognized that "it may not be possible to draw congressional districts with mathematical precision," and it held that the Constitution requires that they be drawn so that, "as nearly as is practicable, each representative should cast a vote on behalf of the same number of people."

In *Williams v. Rhodes* the Court stated:

> "In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification."[2]

In *Kramer* the Court stated:

> ". . . any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."[3]

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[1]376 U.S. 1 (1964).
[2]393 U.S. 23 at page 30.
[3]395 U.S. at 626.

and

> "Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest."[1]

In *Kirkpatrick v. Preisler*[2] perhaps the most stringent rule in legislative apportionment cases was set forth when the Court stated:

> ". . . the command of Art I, § 2, that States create congressional districts which provide equal representation for equal numbers of people permits only the limited population variances which are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown."[3]

In speaking about the *Kirkpatrick* majority opinion, Justices Harlan and Stewart, dissenting, stated:

> "Whatever room remained under this Court's prior decisions for the free play of the political process in matters of reapportionment is now all but eliminated by today's Draconian judgments. Marching to the non-existent 'command of Art I, § 2' of the Constitution, the Court now transforms a political slogan into a constitutional absolute. Strait indeed is the path of the righteous legislator. Slide rule in hand, he must avoid all thought of county lines, local traditions, politics, history, and economics, so as to achieve the magic formula: one man, one vote."[4]

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[1] 395 U.S. at 627.
[2] 394 U.S. 526 (1969).
[3] 394 U.S. at 531.
[4] 394 U.S. 549.

At other parts of the decisions, even in the most recent cases, however, the power of the state to make reasonable adjustments was recognized in *Kramer*. The Court quoted with approval *Swann v. Adams*[1] where the Court stated:

> "variations (are allowable) which are based on legitimate considerations incident to the effectuation of a rational state policy."[2]

3. The Recent Decisions of This Court.

On June 7, 1971, a group of decisions was announced by this Court which constituted a completely new turn in the direction that the "one man, one vote" doctrine was taking. Up until this time, the trend had clearly been in making the doctrine more and more rigid, and uncompromising. The new decisions made an abrupt about-face, and the pendulum started in the other direction. As the late Mr. Justice Harlan stated in his separate opinion in *Whitcomb v. Chavis:*

> "Earlier this Term I remarked on 'the evident malaise among the members of the Court' with prior decisions in the field of voter qualifications and reapportionment. Oregon v. Mitchell, 400 U.S. 112, 218 (1970) (separate opinion of this writer).
>
> Today's opinions in this and two other voting cases now decided confirm that diagnosis."[3]

The first case in which decision was announced was *Abate v. Mundt*.[4] This case involved a challenge of

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[1]385 U.S. 440.
[2]385 U.S. at 444.
[3]403 U.S. at 165.
[4]403 U.S. 182.

malapportionment in Rockland County, New York. The Court of Appeals in the State of New York upheld the new plan, and the United States Supreme Court affirmed in *Abate*. The Court re-established the early viable tests, stating:

> "In assessing the constitutionality of various apportionment plans, we have observed that viable local governments may need considerable flexibility in municipal arrangements if they are to meet changing societal needs, Sailors v. Kent Board of Education, 387 U.S. 105, 110-111 (1967) . . ."
> ". . . this Court has never suggested that certain geographic areas or political interests are entitled to disproportionate representation. Rather our statements have reflected the view that the particular circumstances and needs of a local community as a whole may sometimes justify departures from strict equality."[1]

Previously, the Court had held a 12.1% variance on a similar plan in *Wells v. Rockefeller*[2] as being an invalid variation from equality. They upheld an 11.9% variation in *Abate*.

In *Whitcomb v. Chavis*[3] the Court was involved with the validity of multi-member districts. A three judge District Court had determined that in the particular facts in Indiana, that a multi-member district constituted discrimination, and the Supreme Court re-

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[1] 403 U.S. at 185.
[2] 394 U.S. 542.
[3] 403 U.S. 124.

versed, holding that the facts did not establish such discrimination. The Court stated:

> "The mere fact that one interest group or another concerned with the outcome of . . . elections has found itself outvoted and without legislative seats of its own provides no basis for invoking constitutional remedies where, . . . there is no indication that this segment of the population is being denied access to the political system."[1]

A further change in the approach of the Court in *Whitcomb* is evidenced where the Court stated:

> "Even if the District Court was correct in finding unconstitutional discrimination against poor inhabitants of the ghetto, it did not explain why it was constitutionally compelled to disestablish the entire county district *and to intrude upon state policy any more than necessary to* ensure representation of ghetto interests." (emphasis added)[2]

In *Ely v. Klahr*[3] the Court affirmed the decree of the District Court in Arizona on reapportionment in which the District Court retained jurisdiction to create a Court plan for reapportionment in event the legislature failed to act in time for the 1972 elections. The Court noted in a footnote that judicial relief becomes appropriate only when the legislature fails to reapportion according to Federal constitutional requisites in a timely fashion after having an adequate opportunity to so do.

In *Gordon v. Lance*[4] the Supreme Court reversed the West Virginia Supreme Court of Appeals after the

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[1]403 U.S. at 154 and 155.
[2]403 U.S. at 160.
[3]403 U.S. 108.
[4]403 U.S. 1.

State Court had determined that a 60% vote for bonded indebtedness was unconstitutional under the "one man, one vote" theory. Before discussing *Gordon v. Lance*, it should be noted that in a summary disposition, and based upon *Gordon v. Lance*, the United States Supreme Court overruled the California Supreme Court in *Westbrook v. Mihaly*.[1] The California Supreme Court, as had the West Virginia Supreme Court, determined that only a majority vote could apply on a bond election as any other requirement diluted the strength of those persons desiring the bond election to carry. Both of the State Supreme Courts relied on *Gray v. Sanders*,[2] and *Cipriano*.[3] The Court stated:

> "We conclude that the West Virginia court's reliance on the Gray and Cipriano cases was misplaced. The defect this Court found in those cases lay in the denial or dilution of voting power *because of group characteristics-geographic location and property ownership—that bore no valid relation to the interest of those groups in the subject matter of the election;* moreover, the dilution or denial was imposed irrespective of how members of those groups actually voted." (emphasis added)
>
> "Cipriano was no more than a reassertion of the principle, consistently recognized, that an individual may not be denied access to the ballot because of some extraneous condition, such as race, e.g., Gomillion v. Lightfoot, 364 U.S. 339 (1960); wealth, e.g. Harper v. Virginia Board of Elections, 383 U.S. 663 (1966); tax status, e.g. Kramer v. Union Free School Dist., 395 U.S. 621

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[1] 2 Cal. 3d 765, 471 P. 2d 487.
[2] 372 U.S. 368.
[3] 395 U.S. 701.

(1969); or military status, e.g., Carrington v. Rash, 380 U.S. 89 (1965)."[1]

and

"We conclude that so long as such provisions do not discriminate against or authorize discrimination against any identifiable class they do not violate the Equal Protection Clause."[2]

The foregoing decisions of the Supreme Court clearly indicate that the rights of the states to promote plans for the operation of local functions is going to be scrutinized in a different light than the trend established by the early decisions. The voting methods should now be examined to determine if they meet "the needs of a local community",[3] and create "flexibility in municipal arrangements necessary to meet changing social needs."[4]

In making these determinations this Court has now instructed the courts below not "to intrude upon state policy any more than necessary."[5]

Subsequent to the foregoing decisions, this Court has dealt with voting requirements in other cases. In *Bullock v. Carter*[6] the Court examined filing fees for candidates stating:

"In approaching candidate restrictions it is essential to examine in a realistic light the extent and nature of their impact upon voters."[7]

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[1]403 U.S. at 4 and 5.
[2]403 U.S. at 7.
[3]*Abate v. Mundt*, 403 U.S. at 185.
[4]*Abate v. Mundt*, 403 U.S. at 185.
[5]*Whitcomb v. Chavis*, 403 U.S. at 160.
[6](1972) 31 L. Ed. 2d 92.
[7]31 L. Ed. 2d at 100.

The Court held in *Bullock* that the fees must be reasonable so as not to deprive those otherwise qualified from seeking election.

In *Dunn v. Blumstein*[1] the Court considered durational residence requirements of a bona fide resident of the state. In view of the fact that the exclusion from the polls was of a person otherwise qualified to vote, and subject to the jurisdiction of the state in which he resided the Court determined that by reason of "the character of the classification in question; the individual interests affected by the classification; and the governmental interest asserted in support of the classification . . . that the state must show a substantial and compelling reason for imposing durational residence requirements."[2] It should be noted that the imposition of "compelling reasons" as a test was made here in a case where the man excluded was in all other respects, qualified as a person who was entitled to vote and was being governed by the state which was denying him the franchise.

If a summary can be made of the prior "one man, one vote" cases, it may be fairly said that while the right to vote is jealously guarded, in each instance where voting procedures were struck down the Court has found that the persons who were denied the franchise were in the class of persons within the jurisdiction of and being governed by the agency over whom they had a diluted or no voting control. In such a situation, the Court required the state to show a "compelling reason" why the restrictions were present.

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[1] 31 L. Ed. 2d 274.
[2] 31 L. Ed. 2d at 280.

We will show, however, that in the present case the residents who happen to live within the District are not by reason of such residency subject to the jurisdiction of the District, nor are they being governed by the District. It is the landowners on the other hand who are in the District's jurisdiction and governed by it to the limited extent that the District exercises governmental functions. If the "compelling reason" test is required, it should be used to show what right the state would have to take the franchise away from the landowners. As the people being governed, they should have the voice to control those who exercise the governmental power.

D. Application of Prior Decisions to Landowner Qualification in District Elections.

As we have noted, the appellee is a governmental agency of very limited powers. It was formed for the purpose of benefiting the land within its boundaries by supplying those lands with water for irrigation of crops. It has the power to charge for water delivered, and to assess land in accordance with the benefits the land has received.

To vote you must be a landowner in the district.[1] The elected Board of Directors carries on the business of the district,[2] but the construction of facilities or projects is determined by election of the landowners.[3] The landowners, if they so desire, can designate persons to vote for them by proxy.[4]

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[1]California Water Code, § 41000.
[2]California Water Code, § 40658.
[3]California Water Code Div. 14, Part 5, § 40658.
[4]California Water Code, § 41002.

Under the foregoing facts, appellants claim that placing the right to vote in the 307 landowners and denying the right to some of the 77 men, women and children who live within the District deprives those residents of protection afforded by the Equal Protection Clause of the Constitution. Even under the criteria of the older decisions of this Court we would find here a "compelling state interest" which would authorize such a limitation of the franchise. Under the later decisions the answer is even more obvious.

The purpose and function of the District is to benefit land, not the people who happen to live within its boundaries. The District has a direct effect upon the land and hence the landowner. It has at most an indirect effect upon residents and even here the fact of residence has no relation to the impact that District operations have on a particular individual.

It could be argued that the furnishing of water for irrigation creates jobs and therefore the District's acts affect workers who live within the boundaries. If this is true, the District's acts have precisely the same effect on workers who live outside of the boundaries, but who work on land within the District. Why should one worker be given the franchise, and not the other? Their relationship to the District is the same except for the accident of residence. In each case, however, it cannot be said that their relationship to the District is such that denying either of them the right to vote is a violation of their rights protected by the Equal Protection Clause. Certainly, the indirect effect of the District's acts on these workers cannot be compared to the direct effect those acts have on the landowners. The landowners are truly the only people who are governed

by the district. The acts of the district directly affect only them, and they are directly burdened with payment for district benefits. In addition to assessments, unpaid tolls and charges become a lien on the land on which water is used and must be paid by the landowner.[1]

Appellants further argue that the Constitutional rights of lessees are destroyed by giving the vote to their landlords. They state that District activities have an effect on lessee operations, and for this reason, they are denied "equal protection" if they do not have the franchise.

We cannot agree. The relationship between the lessee and the lessor is contractual. The lessee has only such rights to the use of the land that is granted by the lessor. His right to the use of the land stems only from the rights held by the landowner, which the landowner agrees in the lease the lessee may exercise. To tell a landowner that he *must* give a lessee the same right to direct district operations by voting as the landowner has is no different than telling the landowner that he *must* give a lessee the right to use the property in any way the lessee determines, without restriction or control by the landlord.

If the landowner is willing that the long term destiny of his land as affected by District operations be turned over to the lessee, then the lease can provide that the lessee be named as the landlord's proxy. This should not be forced on the landlord, however, as the lease may be of short duration and the landowner may not desire to have long term plans relating to the irrigation of this land decided by a short term tenant.

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[1]See California Water Code, §§ 47183-47185.

From a Constitutional standpoint, it is difficult to perceive how a person whose only interest in the land stems from an agreement which authorizes him to exercise certain rights owned by the lessor is denied "equal protection" if the landowner decides to limit the lessee's rights. The creation of a contractual relationship in and of itself does not create Constitutional rights in one of the parties where such rights did not exist in absence of the contract.

The Legislature of California determined that in a district such as appellee, that the persons most directly concerned and affected by the operation of the district were the landowners who received the benefits and paid the bills. The Legislature felt that this was a reasonable class to establish in granting the right to vote in district elections. In circumstances such as are presented in this case, it is the only way to provide a "viable local government."[1] To take the right to vote away from the 307 landowners and turn it over to the 77 men, women and children, most of whom are the employees of the landowners, would not meet the "particular circumstances and needs of a local community."[2] It would take voting control away from those directly interested and place it with those who at most have a very indirect interest in district operations.

E. Weighted Voting Based on Assessed Value Does Not Violate Due Process.

If the state may select landowners as the class of persons directly interested in district activities so as to limit the franchise to that group, does the state have the further right to apportion voting among this class

[1] *Abate v. Mundt*, 403 U.S. at 185.
[2] *Abate v. Mundt*, 403 U.S. at 185.

based on assessed valuation of the land? The answer to this question depends upon whether or not such apportionment is essentially fair to the other landowners.

The reason for such apportionment is to distribute voting strength in proportion to the liability which is created by district activity. Districts are formed to benefit land, but in order to provide those benefits, projects must be constructed, and the land becomes encumbered with the debt the district creates when it borrows funds to construct the necessary works. Assessments are then levied against the land to pay the obligations created by the district.

It does not seem unreasonable to say that among the landowners, the determination of the size and amount of indebtedness that will be created against each parcel should not be so weighted that the person whose land will bear a larger share of indebtedness than his neighbor should not have a larger voice in making the determination.

Statements such as "voter qualifications have no relation to wealth"[1] are perfectly proper when we are talking about the normal franchise for governmental units whose general powers touch all of the citizens. Where as here, however, we are speaking about a special agency which affects a special group of people, we should not blindly seize such statements as pronouncements of unassailable constitutional requirements, but instead should examine the particular circumstances to determine if the weighted voting is in fact fair and equitable.

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[1]*Harper v. Virginia State Board of Elections,* 383 U.S. 663 at 666.

The formation of a district is initiated by the landowners who must be a majority both in number and value of the land in the proposed district.[1] These landowners select one of the many acts available to them to form a district. They could, if they chose, form a Mutual Water Company[2] and issue shares of stock which are assessable,[3] and essentially, perform the same function as a district. Such companies even have the right to exercise eminent domain.[4] Companies so formed have provided a large share of the development of California water supplies, but like other corporations, voting is governed by the number of shares held by each landowner. Thus, to obtain more water for a larger holding, one landowner is required to buy more shares than his neighbor. In turn, he pays a larger assessment and has more votes.

This type of voting procedure has stood the test of time and no one has questioned its fairness. We see the same voting procedure in profit corporations throughout the United States, and it has not been determined unreasonable that a person with a large investment should not have a larger voice in management than a person with a smaller one.

". . . viable local governments may need considerable flexibility in municipal arrangements if they are to meet changing social needs."[5] Weighting the voting between landowners in proportion to the share of the debt that is created rests upon the same equitable principles found in Water Companies. Governmental agen-

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[1]California Water Code § 39400.
[2]California Civil Code § 330.25.
[3]California Civil Code § 331.
[4]California Code of Civil Procedure § 1238.
[5]*Abate v. Mundt*, 403 U.S. at 185.

cies should be given the same right to be flexible and fair as private agencies, and the rights of persons such as the landowners should be viewed in the light of what has been accepted as fair and equitable in comparable circumstances. When so viewed, weighted voting stands the tests that should be applied.

V.

CONCLUSION.

The right to vote is certainly one of the most precious rights afforded to citizens of a democracy as it gives control over the governing body by those who are governed. The Court should vigorously apply the Constitutional safeguards available which provide protection to our right of franchise. In so doing, however, the Court should not take the right to vote away from a class of citizens who are directly governed by the governmental agency in question, and place it with another class who have little or no contact with or interest in the governmental unit.

Traditionally, when dealing with governmental agencies which have a general impact upon the persons within its jurisdiction, we have used residency as the criteria to determine who shall vote. This tradition is based upon the fact that the agency can, and does, exercise the police, tax, judicial, commerce, social welfare, and school powers which restrict, limit and govern the basic freedom of persons living within the jurisdiction. To safeguard against overzealous application of governmental power, the right to vote is given to those who are subject to that power. Jurisdiction to exercise governmental power is given over persons who reside within the agency so residence being the basis of that jurisdiction is the proper basis for determining who shall vote.

This tradition should not blind the Court to the fact that in certain limited local governmental agencies the foregoing is not true. The agencies are formed to provide a special function for a special group. Jurisdiction to exercise the agencies' power is not based on residence, it is based upon the location of a parcel of land being within the agencies' boundaries. The appellee District has no jurisdiction to act against a person because they reside within the District. Its jurisdiction and its exercise of governmental power concerns only the land within its boundaries, and the owners of that land wherever they might reside.

The people who are being governed by the limited powers of the District are the landowners. Following our traditional concept that those who are governed have the right to vote to control the governing agency, it follows that the voting qualifications as they now exist are not only Constitutional, but are the fairest that could be devised.

Dated: September 6, 1972.

Respectfully submitted,

SHERWOOD & DENSLOW GREEN,
By DENSLOW GREEN,
Attorneys for Amicus Curiae, Irrigation Districts Association of California.

SUBJECT INDEX

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In the
Supreme Court of the United States

October Term, 1972
No. 71-1456

SALYER LAND COMPANY, a California corporation, C. EVERETTE SALYER; FRED SALYER; LAWRENCE ELLISON; and HAROLD SHAWL,

Appellants,

vs.

TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district,

Appellee.

On Appeal from the United States District Court for the Eastern District of California

BRIEF OF CALIFORNIA CENTRAL VALLEYS FLOOD CONTROL ASSOCIATION AS AMICUS CURIAE

Interest of Amicus Curiae

This brief is submitted by the California Central Valleys Flood Control Association (hereinafter the "Association") as amicus curiae pursuant to written consent of the parties filed with this Court. The membership of the Association includes sixty reclamation districts organized under Division 15 (Sections 50000 et seq.) of the California Water Code. (All references to code sections are to the California Water Code). These districts comprise a total of 650,000 acres within the Sacramento and San Joaquin Valleys in California. They comprise a major part of the agricultural area along the Sacramento River and in the Sacramento - San Joaquin delta. There are many other reclamation districts in California, not

members of the Association, including several within the boundaries of Appellee District.

The voting procedures for water storage districts and for reclamation districts (Sections 50700 et seq.) are substantially identical, except that reclamation districts vote at large while water storage districts vote by divisions (Sections 41150 et seq.) All reclamation districts in California may thus be affected by the decision of this Court on whether voting within California water storage districts by landowners in proportion to the value of their property (under Sections 41000 and 41001) is constitutional.

For that reason the Association files this brief in support of the position of Appellee District. The Association believes that the voting procedure for water storage districts is clearly rational, not violative of any public policy and is constitutional as determined by the majority of the Court below.

Reclamation districts and water storage districts are not unique in voting in proportion to land ownership. Many other types of districts in California operate through a board elected on the basis on land ownership, as for instance, California water Districts (formed under Sections 35000 et seq.). It is a procedure which is widely used elsewhere, as shown in *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 490 P. 2d 1069 (Wyoming, 1971).

The Court below was unanimous in upholding the constitutionality of voting by landowners and in rejecting the contention that residents must be allowed to vote within Appellee District. The majority of the Court upheld the weighted vote on the basis of value of the lands owned, and rejected the contention that tenants, as well as landowners, must be allowed to vote. The majority correctly construes the Constitution as applied to a district like Appellee with limited powers related directly to the lands served.

ARGUMENT

Water Storage Districts, Like Reclamation Districts, Render Services To, And Are Supported By, The Property Rather Than The People Within The District.

A water storage district is formed at the request of real property owners having land which is susceptible of irrigation from a common source (Section 39400). Reclamation districts are formed by owners of swamp or overflowed lands which are susceptible of reclamation from such overflow (Section 50300). These provisions are entirely unrelated to whether or not there are any residents within the area affected. Both provide a vehicle to deal with problems related to the land, either lack of water or too much of it, through the actions of the owners of the land involved.

A water storage district acts through projects approved by the landowners (Sections 42200 et seq.) A reclamation district acts through plans of reclamation approved by the County Board of Supervisors or the State Reclamation Board (Sections 51000 et seq.). District activities are thereafter largely limited to the construction, operation and maintenance of the "project" for the water storage district and the "plan" for the reclamation district. These activities are related to the development or protection of the property within the district.

The "project" of the water storage district is then paid for by assessments upon the land in proportion to the benefits which it receives (Section 46176). The reclamation district assessment is similar (See *e.g.* Section 51231). Provisions for elections in each type of district call for votes in proportion to value of land, comparable to the way in which the "project" or "plan" is financed (Sections 41001 and 50704).

Appellee water storage district, has within its boundaries numerous reclamation districts which attempt to prevent the overflow of the area within their respective boundaries by maintenance of levees and drainage facilities. Most of these reclamation districts have no residents. See Exhibit A attached hereto. This is not unique. Many of Association's member reclamation districts have few or no residents even now, years after their reclamation has been completed.

Voting based upon residency as urged by Appellants in this case, would be illogical and inappropriate in such a district. It is apparent that these districts are not set up to serve people but to serve land. They serve the same basic function whether anyone lives within the district or not.

Nor is lack of population mere accident or happenstance. Reclamation districts are formed from property subject to flood or overflow. There will, of necessity, be few if any residents when formed. This is also true with respect to water storage districts whose purpose is to bring water to lands in need of irrigation. The logical concomitant of this situation is sparce population. Appellee District is an example of such a sparcely populated district.

Where there are residents living within such a district they may, of course, be affected by the district's activity to the extent that it enhances the economy. But to conclude on this basis that the residents are the persons who must control the district is a non sequitur. Residents immediately outside the geographic unit may also be affected by the district's operation and yet it could not be suggested that such adjacent residents must join in the control of the district.

The geographic limits of these districts are not in any way related to any particular economic or social unit such as is reflected in a city or a county. District boundaries are con-

trolled by geologic conditions. See Sections 39400 et seq. (water storage districts) and Sections 50300 et seq. (reclamation districts). Both water storage districts and reclamation districts are thus organized, financed and operated by and for the lands protected and benefited thereby and not by or for activities related to the general population of the lands served. It is appropriate that they be managed in the same manner.

The Constitution Allows Landowner Voting In Proportion To Value Where, As Here, The Functions Are Oriented To And Supported By The Land.

The law applicable to this case reflects a distinct and proper trend in the direction of recognizing the need for flexibility in local voting procedures.

In *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970) a policy to apply in this case is suggested. The Court there dealt with a vote limited solely to property owners in an election to authorize the issuance of bonds to be serviced by property taxes. The bonds were to be used to finance municipal improvements such as parks, playgrounds, sewer systems, police and libraries.

Both property owners and nonproperty owners have a substantial interest in the public facilities and services to be provided by the outcome of that election. The Court states (at page 209) that when all citizens are affected in important ways by governmental decisions, the constitution doesn't permit weighted voting to the exclusion of otherwise qualified citizens from the franchise. Placing the vote solely in the power of the property owners, the Court indicates, could however be justified when there is some overriding interest of those owners which the state is entitled to recognize. The

clear inference is that such a situation may exist although it wasn't before the Court in that case.

The Court comments (page 210) that the justification for restricting the franchise to the property owners would seem to be strongest where only property tax revenues would be used to service the general obligation bonds. In this regard, without doubt, the case presently before the Court is stronger than *Phoenix* where other sources of revenue were available. The bonds in that case were to be used to service all of the people of that area, with such people-oriented services as libraries and police. Residents may well be entitled to the franchise when they are so vitally concerned with the functions to be authorized by that election.

In the case before this Court no such services are involved. Not only are the costs of Appellee District's operation borne solely by the property benefited, but the services performed by the district are also property-oriented. We are here concerned with property in need of irrigation. That property is assessed by the district for the sole purpose of providing the irrigation needed. No people-oriented services are involved. The overriding interest of the owners in the irrigation of their lands is apparent. This is clearly a stronger case for restricted voting than the one before the Supreme Court in *Phoenix*.

Again in *Phoenix* the Court states (page 212) that there was "no basis for concluding that nonproperty owners are substantially less interested in the issuance of the securities than are property owners". The inference is clear and is applicable in the case presently before the Court. Here there is the basis for a conclusion that nonproperty owners are substantially less interested in the operation of the irrigation system than property owners.

In the words of *Phoenix* (page 212) there is in this case an "adequate reason to restrict the franchise . . . to property

owners . . .": The Appellee District was formed for the purpose of serving property not people; it in fact serves property not the people. Certainly it is not arbitrary to have voting in such a water storage district determined by ownership of the land served.

This concept is again recognized in *Gordon v. Lance*, 403 U.S. 1 (1971). The Court there states: "The defect this Court found in those cases (*Gray* and *Cipriano*) lay in the denial or dilution of voting power because of group characteristics – geographic location and property ownership – that bore no valid relation to the interest of those groups in the subject matter of the election; . . ." (403 U.S. 4). Such a valid relation does exist in this case.

The earlier decision of *Hadley v. Junior College District*, 397 U.S. 50, also recognizes at pages 54 and 55 that popular elections need not always be required and that other innovations by a State are proper.

The recent decision of the California Supreme Court in *Burrey v. Embarcadero Mun. Improvement Dist.*, 5 Cal. 3d 671 (1971) is not inconsistent with this approach. That case struck down the application of landowner voting on the basis of value in a district which exercised powers comparable to that of a city and in which a substantial population density had developed. It may be implied from this decision that even a local agency exercising broad general powers could be formed and commence operation with land value voting, provided an equitable provision were made to shift voting control to residents as the population develops. Indeed such a plan was previously approved by the California Supreme Court in *Cooper v. Leslie Salt Co.*, 70 Cal. 2d 627 (1969). Appellee District in this case has no general powers and only the sparcest of population and continued land value voting should be justified on either score.

A proper example of the rule anticipated in the *Hadley*, *Phoenix*, and *Gordon* decisions for application in the present case is shown by the recent decision of the California Court of Appeal in *County of Riverside v. Whitlock*, 22 Cal. App. 3d 863 (1972). In that case a special assessment was imposed by the County for an improvement to be constructed at the expense of the owners of the lands benefited. The assessment was approved despite a protest from the owners of 8.6 per cent of the lands affected since a majority of the lands must protest to defeat the assessment. The protestors challenged on the basis that the small landowners and nonlandowning residents were not given an appropriate voice and the majority in land ownership was allowed, in effect, to control. The Court of Appeal, after review of the decisions of this Court, stated at page 876:

> "Since only those landowners who are directly benefited are charged with the cost of the improvments in proportion to the benefit conferred and since land area bears some reasonable relationship to the amount of the assessment, there is a rational basis for making the governmental decision subject to landowners' protest and in measuring the sufficiency of the protest by the land area protested."

This statement is completely appropriate when applied to the construction, operation and maintenance of irrigation facilities for the benefit of the lands served, the sole function of Appellee District. A majority of the lands, voting as such, can properly determine whether such facilities should be installed and indebtedness incurred therefor. It should similarly be allowed to control the operation and maintenance of those facilities through the Board chosen for that purpose.

Justice Harlan's opinion in *Whitcomb v. Chavis*, 403 U.S. 124 at 156 (1971), correctly describes the increasing care and caution with which this Court has applied the constitutional yardstick to State electoral procedures. At page 166 Justice Harlan cites *Abate v. Mundt*, 403 U.S. 182 (1971) as a recognition by this Court of the need for flexibility in local governmental arrangements, and the interest in preserving the integrity of political subdivisions and the longstanding tradition behind the State's practice being challenged. He describes the impossibility of achieving absolute equality in "voting power" and the need for the Court to continue and even to increase its restraint in overturning electoral procedures established by the States. That restraint applied consistently with the decisions of this Court, would uphold the constitutionality of the election procedures in California water storage districts and sustain the decision below.

If Landowners Are To Vote, Then Land Value Is A Proper Basis

Appellants would not only give a vote to each resident, but also to each tenant and each landowner. Such an arrangement would create a hodgepodge of potential voters and the ability, through perfectly proper methods, to create many more voters with victory presumably available to the one with the most fertile imagination.

Ownerships can be created by selling small parcels of land to several compliant buyers subject to a lease-back arrangement, for example, or by a corporate landowner distributing a portion of its land among its shareholders. Tenancies can be created, by leasing to multiple entities with a sublease in favor of a single farming company, or through multiple subleases. (If "tenants" are entitled to vote, are not "sub-

tenants" as well?) Residents can even be created in a district such as Appellee by landowners or tenants moving their employees into the district. Each of these criteria for voting would, in a district like Appellee, be subject to manipulation, and none should be compelled by the constitution.

The only method of voting in such a district in which additional votes cannot be intentionally generated is by value of land. Land values can be added only by the County Assessor (Section 41020) and are not subject to expansion by those within the district in an attempt to alter the voting pattern. The California legislature has thus chosen the most stable basis for voting in such a district and the one which permits voting in the same proportion as the benefits and burdens are shared, as noted by the Court below. It should be sustained.

SUMMARY OF ARGUMENT

Appellee district performs a limited service in obtaining and distributing irrigation water to lands within its boundaries. The district was formed by landowners, and is supported by assessments upon the lands within the district in proportion to the benefits received by those lands. Landowners have an overriding interest in the operation and maintenance of that service. The Constitution does not prevent a determination by the state that the governing board of such a district may be selected by the landowners within the district. Voting for such a board by landowners, in proportion to the value of the lands benefited, is logical, equitable and proper.

CONCLUSION

The voting procedure under Water Code Sections 41000 and 41001 is constitutional in view of the nature of the Appellee water storage district and the function which it performs. A contrary view could upset the long standing and well established voting procedures of all landowner voting districts in California, including reclamation districts. The Constitution does not require such a result. The decision of the lower Court should be affirmed.

September 8, 1972.

Respectfully submitted,

GEORGE BASYE

Counsel for Amicus Curiae

EXHIBIT A
RECLAMATION DISTRICTS WITHIN
TULARE LAKE BASIN WATER STORAGE DISTRICT

	Acreage *	Number of Residents **
Homeland R. D. 780	27,518	4
Wulbur R. D. 825	16,300	4
El Rico R.D. 1618	13,548	2
North Central Consolidated 2071	8,300	1
Consolidated R. D. 812	9,692	0
Gates R. D. 2079	3,697	0
Delta Lands R. D. 770	13,400	0
O'Bryan R. D. 760	12,800	0
Cohn Central Consolidated 761	27,000	0
Goldberg R. D. 753	3,751	0
Tulare Lake R. D. 749	18,314	0
		11

* Locations of these districts are shown in the Appendix on Plaintiffs' Exhibit 3.

** The remaining residents in Appellee District live on the higher perimeter lands outside the reclamation districts as shown in the Appendix on Defendant's Exhibit P.

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

Cases:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1456

SALYER LAND COMPANY, a California corporation, C. EVERETTE SALYER; FRED SALYER; LAWRENCE ELLISON; and HAROLD SHAWL,

Appellants,

vs.

TULARE LAKE BASIN WATER STORAGE DISTRICT, a public district,

Appellee.

On Appeal from the United States District Court for the Eastern District of California

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REPLY BRIEF FOR THE APPELLANTS

OPINIONS BELOW

The opinions of the Court below, which had not been reported when the opening briefs were prepared, have now been published. 342 F.Supp. 144 (E.D. Cal. 1972).

ARGUMENT

With the filing of the defendant district's brief and the supporting briefs of the amici curiae, this case is now ready to be summed up. The singular system which obtains in Tulare Lake Basin Water Storage

District, with the statutes bluntly providing that "Only the holders of title to land are entitled to vote at a general election",[1] and "Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars ($100) ... worth of his land ....",[2] has been the subject of some singular defenses.

1. The argument that the District has no governmental powers

The brief of the defendant district puts it like this:

> "The directors of a California water storage district ... exercise virtually no governmental power whatsoever."[3]

The *amicus curiae* Irrigation District's Association of California is not in complete agreement:

> "Its [the district's] jurisdiction and its exercise of governmental power concerns only the land within its boundaries, and the owners of that land wherever they might reside."[4]

The *amicus curiae* California Central Valleys Flood Control Association puts its view quite baldly:

> "The Appellee District was formed for the purpose of serving property not people; it in fact serves property not the people."[5]

The first difficulty with these positions springs from authority. The California courts view these districts

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[1] Calif. Water Code, § 41000.

[2] Calif. Water Code, § 41001.

[3] District's brief, p. 13.

[4] Brief of Irrigation Districts Valleys Association of California, p. 30.

[5] Brief of California Central Valleys Flood Control Association, p. 7.

as entirely governmental both in structure and function. The leading case is *Glenn-Colusa Irrigation District* v. *Ohrt*:[6]

> "State agencies such as irrigation or reclamation districts * * * are agencies of the state whose functions *are considered exclusively governmental;* their property is state owned, *held only for governmental purposes;* they own no land in the proprietary sense."[7]

The *Glenn-Colusa* case was cited in both the jurisdictional statement and opening brief; neither the defendant district nor either of the amici curiae have seen fit to make reference to it.

The Attorney General of California on February 20, 1969 rendered an opinion to the California Districts Securities Commission on the governmental nature of water storage districts, in a matter which concerned the defendant district itself:

> "This is in answer to your request for our opinion on the status of the Tulare Lake Basin Water Storage District as a 'political subdivision' of the State of California. *I have concluded that water storage districts are considered political subdivisions of the State.*

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[6] 31 Cal. App. 2d 619, 88 P.2d 763 (1939).

[7] 88 P.2d at 765. [Emphases added throughout this brief] Calif. Water Code § 39060 is as follows: "The [water storage] districts formed pursuant to this division are districts of the nature of irrigation, reclamation, or drainage districts in respect to all matters contemplated in the provisions of the constitution of the State of California relating to irrigation, reclamation, or drainage". Defendant district has conceded that water storage districts and irrigation districts "are virtually identical in all respects relevant to this case". Reply memorandum filed September 30, 1970, page 8.

"The California Water Storage District Law includes a section titled 'Nature of Districts Formed Under This Division.' This is Water Code section 39060 which provides as follows:

> 'The districts formed pursuant to this division are districts of the nature of irrigation, reclamation, or drainage districts in respect to all matters contemplated in the provisions of the constitution of the State of California relating to irrigation, reclamation, or drainage.'

"Thus the conclusions reached as to the nature of irrigation districts would also apply to water storage districts, and it is well settled that irrigation districts are considered political subdivisions and agencies of the State. See *Glenn-Colusa Irrigation District* v. *Ohrt*, 31, Cal.App.2d 619, 621 (1939) and cases cited therein."[8]

This opinion of the Attorney General of California was also referred to in both the opening brief and jurisdictional statement. The briefs of the defendant district and of the amici curiae will be searched in vain for any reference to it.

To turn from authority to considerations of what the district actually does, the record reveals that it has successfully claimed the standing of *parens patriae*[9] to represent the interest of Tulare Lake Basin in litiga-

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[8] The opinion is set forth in full beginning on page 17 of the Appendix. It is also treated on page 61 of the Appendix.

[9] The concept of parens patriae is certainly governmental; Mr. Justice Holmes speaks of it in *Georgia* v. *Tennessee Copper Company*, 206 U.S. 230, 237 (1907) as "quasi-sovereign", an expression quoted by Mr. Justice Douglas in his discussion of parens patriae in *Georgia* v. *Pennsylvania R. Co.*, 324 U.S. 439, 447 (1945).

tion filed by the United States in the very Federal Court from which the present appeal has been taken:

> "On October 4, 1965 Tulare Lake Basin Water Storage District filed a motion for leave to intervene in the case of *United States* v. *Tulare Lake Canal Company,* No. ND 1483, the litigation to determine applicability of the acreage restrictions of federal reclamation law to the lands in the Kings River service area. In its papers for such intervention, Tulare Lake Basin Water Storage District stated in part as follows:
>
> > 'It would appear appropriate that Tulare Lake Basin Water Storage District, as the public agency most clearly concerned with the water rights of Tulare Lake Basin, be granted leave to intervene, in the nature of the right of parens patriae, to speak for and assert the interest of Tulare Lake Basin.'
>
> "The motion for leave to intervene was granted by this Court [10] by order date January 27, 1966, and the district has participated in the litigation, which was recently tried, since that period." [11]

The governmental nature of the district is well demonstrated by Sec. 43158 of the Water Code:

> "All waters and water rights belonging to this State within the district are given, dedicated, and set apart for the uses and purposes of the district." [12]

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[10] That is, the United States District Court for the Eastern District of California.

[11] Appendix, pages 52-53.

[12] The philosophy of Water Code § 43157 is of similar tenor: "The right of way is hereby given, dedicated, and set apart for the location, construction, and maintenance of works [of water storage districts] over and through any land which is or may be the property of this State."

Still further evidence of the district's governmental character is demonstrated by its having received $234,512.24 in federal funds as a disaster relief grant, following the 1969 flood.[13]

The directors of the district are "public officers of the state"[14] who must take an official oath and execute a bond.[15] The district possesses and exercises the power of eminent domain.[16] The district's works may not be taxed[17], it is covered by the special statutory scheme concerning governmental immunity[18], and common with other California governmental bodies, it may obtain judicial validation of its acts.[19] The district "may cooperate and contract with the state . . . or the United States":

> "The cooperation and contract may be for any or all of the following purposes:
>
> (a) Construction, acquisition, purchase, extension, operation, or maintenance of works for irrigation, drainage, storage, flood control, generation and distribution of hydroelectric energy incidental thereto, or any of these.
>
> (b) A water supply.
>
> (c) Assumption as principal or guarantor of indebtedness to the state, the department, any other district, or the United States.

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[13] Appendix, p. 61.

[14] *Re Madera Irrigation District*, 92 Cal. 296, 28 Pac. 272 (1891).

[15] Calif. Water Code, § 40301.

[16] Calif. Water Code, § 43530.

[17] Calif. Water Code, § 43508.

[18] Calif. Government Code, § 811.2.

[19] Calif. Code of Civil Procedure, § 860 ff.; Calif. Water Code § 43730.

(d) To carry out the terms of any contract between the district and the state, the department, any other district, or the United States."[20]

The district's flood control powers, touched on in Water Code Sec. 44001 above quoted, will be discussed at greater length in another section of this brief.[21] As stated in the opening brief, the district may issue bonds secured by assessments,[22] may provide tolls and charges for the use of water, irrigation and power,[23] and may sell surplus water and power.[24]

Finally the California statutes are specific that the properties of the district and its waters are devoted to public use:

> "The use of all water required for the irrigation of land and for domestic and other incidental and beneficial uses within the district, together with the rights of way for canals and ditches, sites for reservoirs and all other property required in fully carrying out the provisions of this division is a public use, subject to the regulation and control of the State in the manner prescribed by law.[25]

The suggestion was made in the opening brief that the issue of the governmental nature of the district may be concluded. This is an unusual procedural situation, in that only a portion of the judgment of the Court

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[20] Calif. Water Code, § 44001.

[21] See page 20, *infra*.

[22] Calif. Water Code, § 45100 ff.

[23] Calif. Water Code, § 43006 ff.

[24] Calif. Water Code, § § 43507, 43001, & 43026.

[25] Calif. Water Code, § 39061.

below has been appealed. The Court was unanimous in finding the district to be malapportioned:

> "The present divisions have not been redivisioned for 40 years. Total assessed valuation of the land in Division 4 is nearly three times greater than the total assessed valuation of Division 10 (Division 4 —$1,954,547; Division 10—$688,425). The result is that $100 of assessed valuation in Division 10 has almost three times the voting power of $100 of assessed valuation in Division 4. In addition, Division 4 has 110 separate landowners, whereas Division 10 has only 4. Each Division is entitled to one director on the District's Board of Directors. Consequently, the 110 landowners in Division 4 have only one-third the representation on the Board when compared to Division 10.
>
> "Such malapportionment present a classic violation of equal protection and therefore defendant is ordered to submit a plan to correct this malapportionment within six months of the date this decision becomes final."[26]

Judge Browning concurred in this finding:

> "Each division elects one director, but the number of landowners in the divisions varies from 110 in division four to four in division ten. While the record does not show the number of lessees in each division, there is no reason to believe that the gross malapportionment among the divisions will be corrected merely by including lessees among those qualified to vote.
>
> "Such malapportionment does indeed present a classic violation of equal protection. *See Reynolds v. Sims,* 377 U.S. 533, 562-63 & n.40 (1964). As Mr. Justice Black said in *Hadley, supra, after finding that important governmental functions*

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[26] Appendix, pp. 106, 107.

> *were involved having sufficient impact throughout the constituency,* 'when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal number of voters can vote for proportionally equal numbers of officials.' 397 U.S. at 56."[27]

The point, then, is that this district has been ordered to reapportion itself. The Court below was unanimous, and no appeal has been taken. The notice of appeal filed by these appellants was expressly limited to "that part of the judgment entered March 10, 1972 which denies an injunction restraining the enforcement, operation and execution of Sections 41000 and 41001 of the California Water Storage District Law." But it was a necessary predicate of the reapportionment order that there have been governmental functions "involved, having sufficient impact throughout the constituency," sufficient to justify the court's intercession. *Hadley* v. *Junior College District,*[28]; *Avery* v. *Midland County, Texas*[29].

Whether the district should have been reapportioned was one of the issues litigated below. The district resisted reapportionment, on a variety of fronts, among others that " the board exercises practically no governmental [powers] at all."[30] The Court determined the issue of apportionment against the district, and no appeal having been taken from that portion of the judgment, it can be strongly argued that the gov-

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[27] Appendix, pp. 118, 119.

[28] 397 U.S. 50 (1970).

[29] 390 U.S. 474 (1968).

[30] Defendant's Opening Brief Following Submission of Factual Statements, July 23, 1971, p. 12.

ernmental nature of the district has been adjudicated and is now the law of the case.[31] The suggestion was made in the opening brief.[32] The briefs of the district and of the amici curiae have attempted no reply of any kind.

2. The argument that districts will not be formed unless weighted voting is retained

> "By the same token, this voting procedure recognizes that, since these projects are for the benefit of the lands in the District and will be paid for by each landowner in proportion to the value of his land, it is essential that a majority in value agree that a project should be adopted. Otherwise, the large landowners could not be induced to join in the formation of a water storage district. Stated differently, it would be rather absurd to assume that the J. G. Boswell Company would be willing to participate in the affairs of the Tulare Lake Basin Water Storage District if Thomas J. Amos and 188 of his friends could at their whim visit a $817,685.00 assessment upon that Company."[33]

This is unimpressive. Irrigation districts are more commonly seen in California than water storage districts; the two are substantially the same.[34] But in irrigation districts only residents have the vote, and it is of course an equal one; landowners do not vote at all unless they be resident. This has not prevented the

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[31] See the discussion in 1B Moore's Federal Practice, beginning at p. 401.

[32] Appellant's Opening Brief, pp. 25, 26.

[33] District's Brief, p. 25.

[34] The appellee district has conceded that water storage districts and irrigation districts "are virtually identical in all respects relevant to this case." Reply Memorandum filed September 30, 1970, p. 8.

formation of large numbers of irrigation districts. In fact, the Court will note that they so predominate that the amicus curiae representing water organizations in California bears the name "Irrigations Districts Association of California."

A new project in a water storage district cannot be undertaken at anyone's "whim". The procedure is lengthy.[35] The project must be approved by the State Treasurer, who may request a report from the Department of Water Resources as to its engineering feasibility.[36]

The district argues that "189 landowners representing 2.34 percent of the acreage in the District represent an absolute majority of the landowners."[37] The suggestion is that it would be distressing for 2.34 percent of the acreage to control the district, even though a majority in number.

A table in Exhibit Q[38] analyzes the landholdings in the District. There are 119 owners of up to 20 acres, 37 with holdings between 21 and 40 acres, and 33 who own between 41 and 80 acres. Put another way, there are 189 landowners who own up to 80 acres each. At the other end of the scale the J. G. Boswell Company owns 61,666 acres. The issue as to how the franchise shall be distributed among the wealthy and non-wealthy is an ancient one; in this country one had thought it to have been long decided. This Court stated in *Gray* v. *Sanders*,"[39] . . . [O]nce the class of voters is chosen

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[35] Calif. Water Code, § § 42200-42752.

[36] Calif. Water Code, § 42500.

[37] District's Brief, p. 24.

[38] Following page 88 of Appendix.

[39] 372 U.S. 368, 381 (1963).

and their qualifications specified, we see no constitutional way by which equality of voting power may be evaded."[40]

As was said in *Stewart* v. *Parrish School Board*,[41]

> "In terms of voting responsibly, there is no necessary correlation between the amount of an assessment and the degree of interest a taxpayer may have in a particular bond issue. A ten thousand dollar house to one person may mean more to that person than a hundred thousand dollar house to another."[42]

The fact that *Stewart* was affirmed by this Court with only Mr. Justice Harlan of opinion that probable jurisdiction should have been noted,[43] was discussed in appellants' opening brief. The district and both amici curiae have chosen to ignore the case; there is no mention of it in any of their briefs. *Stewart* was cited by the Chief Justice in his opinion in *Gordon* v. *Lance*:[44]

> "While Cipriano involved a denial of the vote, a *percentage reduction of an individual's voting power in proportion to the amount of property he owned would be similarly defective.* See Stewart v. Parish School Board, 310 F.Supp. 1172 (E.D. La.) aff'd, 400 U.S. 884 (1970)."[45]

This statement of the Chief Justice was set forth in the appellants' opening brief. There has been no attempt

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[40] This statement is quoted with approval by Mr. Justice Black in *Hadley* v. *Junior College District*, 397 U.S. 50, 59 (1970).

[41] 310 F.Supp. 1172 (1970) (E.D. La. 1970), affirmed, 400 U.S. 884 (1970).

[42] 310 F.Supp. at 1179.

[43] 400 U.S. at 884.

[44] 403 U.S. 1 (1971).

[45] 403 U.S. at 4. This statement is quoted as "particularly pertinent" in the recent case of *Curtis* v. *Board of Supervisors*, 7 Cal.3d 942, 958 (1972).

to distinguish it, or any reference to it at all, in the briefs filed by the district and the amici curiae.

It could be that persons holding only 2.34 percent of the wealth of the United States are in a numerical majority. Tulare Lake Basin Water Storage District presents the problem in microcosm. The district's argument proves too much. If we follow it, the franchise generally should be restricted to those with property. On such a basis Mr. Howard Hughes would presumably be entitled to millions of votes. But as this Court stated in *Harper* v. *Virginia State Board of Elections*,[46] Voter qualifications have no relation to wealth. . . ."[47]

3. The argument that the board's functions are limited to projects

> "The duties of the board of directors are carefully stated by the California legislature. Specifically, the board's functions are limited to examining proposed projects, estimating costs, and reporting thereon.[48]

For this statement the district cites Section 42200[49] of the California Water Code, which details the duties

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[46] 383 U.S. 663 (1966).

[47] 383 U.S at 666.

[48] District's brief, page 7.

[49] "Upon the organization of a district, the board shall make or cause to be made all examinations, surveys, plans and specifications, and estimates of costs for the acquisition, appropriation, diversion, storage, conservation, and distribution of water, any drainage or reclamation works connected therewith, and the generation of hydrolectric energy incident thereto, and the sale and distribution thereof, as may be necessary or requisite to enable the board to ascertain and estimate the requirements and works necessary for the purpose of the district, and the probable cost and to make a report."

of the board of directors with reference to projects, and comes under the heading, "District Project." To say that the board has no other powers than those given by Section 42200 is quite inaccurate. The most important statute on the powers of the board of directors is California Water Code, Section 40658:

> "Business of district. The board shall manage and conduct the business of the district."

There are literally dozens of other statutes dealing with the powers of the board. See, e.g., the following:

> "Acquisition and operation of works. The board may acquire, improve, and operate the necessary works for the storage and distribution of water, and any drainage or reclamation works connected therewith." [50]
>
> "Disposal of water and water rights. The board may sell, distribute, or otherwise dispose of water and water rights not necessary for the uses and purposes of the district." [51]
>
> "Permission to store water and use conduits. The board may grant to the owner or lessee of a right to the use of any water permission to store the water in any reservoir of the district or to carry it through any conduit of the district." [52]
>
> "By-laws, rules and regulations for distribution and use of water. The board shall establish equitable by-laws, rules, and regulations for the distribution and use of water within the district. The by-laws, rules, and regulations shall recognize and shall be subject to such priorities in the right to

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[50] Calif. Water Code, § 43000.

[51] Calif. Water Code, § 43001.

[52] Calif. Water Code, § 43002.

water between the different consumers of the water as may legally exist." [53]

"Contracts. The board may enter into any agreement with the United States or with any state, county, district, public corporation, or municipality of any kind, for a purpose appertaining to or beneficial to the project of the district, and it may do, any acts necessary or proper for the performance of the agreement." [54]

4. The argument that this suit seeks to take control from the landowners and vest it in the residents alone

"In essence, appellants' action seeks to take the management of District affairs away from the 307 landowners who own its 193,000 acres, are subject to the jurisdiction and governing power of the District, and give this control to the registered voters among the 77 men, women and children who live in the District who are not subject of its powers. Of these 77, only members of one family own land within the District." [55]

The first difficulty with this statement is that the landowners as a body do not govern the district. It is governed by the board of directors.[56] The function of the landowners is to elect the board. The Code provides for general elections, which are to be held "on the first Tuesday in February in each odd-numbered

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[53] Calif. Water Code, § 43003.

[54] Calif. Water Code, § 43151. See also § § 43025, 43026, 43150, 43152, 43153, 43154, 43161, 43304, 43305, 43500, 43501, 43504, 43506, 43507, 43530, 43533, 43555, and 44003. There are many others.

[55] Brief of Irrigation Districts Association of California, page 1.

[56] Calif. Water Code, § 40658.

year. . . ."[57] The defendant district may not have been intentionally amusing in its brief:

> "One good test of an electoral system is how it works in actual operation."[58]

The way it works in actual operation is that there has not been a general election for a quarter of a century.[59] Under a voting system like the one enjoyed by this District, there is little motive for elections. The votes have already been counted, and the J. G. Boswell has 37,825 of them.

But to return to the claim that this action seeks to divest landowners of control, the prayer of the complaint is instructive:

> "4. Require defendant Tulare Lake Basin Water Storage District to submit a plan whereby all residents of Tulare Lake Basin Water Storage District will be allowed to vote, without regard to land ownership, or in the alternative, a plan whereby all residents, lessees, and landowners will be allowed to vote, whether or not such residents be landowners, whether or not such lessees be landowners, and whether or not such landowners be residents, but with provision that no resident, lessee or landowner shall in any event or circumstance have more than one vote, however small or however great his landholdings may be."[60]

This case does not seek to deny landowners the franchise. It is primarily concerned with equality of the franchise as among landowners, and the granting of the ballot to lessees and residents.

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[57] California Water Code, § 41300.

[58] District's Brief, page 27.

[59] Appendix, page 60. The last general election was in 1947.

[60] Appendix, page 15.

5. The argument that Schindler v. Palo Verde Irrigation District represents the view of the California courts.

The district bases some considerable reliance on *Schindler* v. *Palo Verde Irrigation District,*[61] and after quoting from the case says:

> "Other states agree with California."[62]

The implication is that *Schindler* is a definitive and recent expression of the view of the California courts. It is not. It is a 1969 intermediate appellate court decision which the California Supreme Court has cast doubt upon in decisions in both 1971 and 1972. *Burrey* v. *Embarcadero Municipal Improvement District;*[63] *Curtis* v. *Board of Supervisors of Los Angeles County.*[64] The latter case was decided on September 19th. In *Burrey* the California Supreme Court struck down a statute granting the franchise only to landowners and giving "one vote for each one dollar ($1) in assesed valuation of land owned by him . . . ." In *Curtis* that court has now ruled invalid a California statute[65] which provided that the filing of protests representing fifty one percent of the total assessed valuation of land within the boundaries of a proposed new city would prevent the calling of an election on the proposal. The defenders of that scheme relied upon *Schindler.*[66] The California Supreme Court stated as follows:

> "In *Burrey* v. *Embarcadero Mun. Improvement Dist.* (1971) 5 Cal.3d 671, 682, fn. 8 [97 Cal.Rptr.

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[61] 1 Cal. App. 3rd 831 (1969).

[62] District's Brief, pp. 14, 15.

[63] 5 Cal. 3rd 671 (1971).

[64] 7 Cal. 3rd 942 (1972).

[65] California Government Code, § 34311.

[66] 7 Cal. 3rd at 958.

203, 488 P.2d 395], we noted that *Schindler* v. *Palo Verde Irrigation Dist.* "may be difficult to reconcile with the Supreme Court cases on this subject, particularly *Kolodziejski*, which was decided after *Schindler*. (See *Girth* v. *Thompson* (1970) 11 Cal. App.3d 325, 330 [89 Cal.Rptr. 823].)" We concluded, however, that "since irrigation districts are substantially different from the EMID—their powers are fewer and more limited to the particular purpose for which the districts were created—we do not reach that question here."

"The applicability of the one-man, one-vote rule to special districts is presently before the Supreme Court in the case of *Associated Enter., Inc.* v. *Toltec Watershed Imp. Dist.* (Wyo. 1971) 490 P.2d 1069, prob. juris. noted, (1972) —— U.S. —— [32 L.Ed.2d 681, —— S.Ct. ——].) The Wyoming Supreme Court in this case had held that an election to establish a watershed district could be limited to landowners because the activities of the district were primarily proprietary instead of governmental."[67]

6. The argument that the weighted voting system should be upheld on analogy to profit corporations.

"We see the same voting procedure in profit corporations throughout the United States, and it has not been determined unreasonable that a person with a large investment should not have a larger voice in management than a person with a smaller one."[68]

But the plight of a small landowner in the defendant district is worse than that of a small stockholder in a California corporation. The latter can cumulate his votes to achieve some minority representation.[69] No

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[67] 7 Cal. 3rd at 958, 959.

[68] Brief of Irrigation Districts Association, page 28.

[69] Calif. Corporations Code, § 2235.

such privilege is accorded the small landowner by the Water Storage District Law.[70] And what private corporation has the power of eminent domain, the power to assess land, the power to issue bonds which are liens on such land, governmental immunity from lawsuits, the right to file validation proceedings,[71] and the right to intervene in litigation as parens patriae? What private corporation has all the waters and water rights belonging to the state within its area given, dedicated and set apart for its uses and purposes?[72] What private corporation could be correctly described by California's Attorney General as one of that state's political subdivisions?[73]

7. The argument that only the landed support the district.

> "Not only are the costs of Appellee District's operation borne solely by the property benefited, but the services performed by the district are also property-oriented."[74]

The suggestion that the landless should be excluded because only the landed pay the bills will not withstand analysis. Since 1969 the defendant district has received $234,512.24 from the Federal government, pursuant to an application in which the defendant described itself as a political subdivision of the State of California.[75]

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[70] The plaintiff landowner in *Schindler* v. *Palo Verde Irrigation District*, 1 Cal. App. 3rd 831 (1969), sought such a right to cumulate, but was not successful.

[71] Calif. Water Code, § 43730.

[72] Calif. Water Code, § 43158.

[73] Appendix, pp. 61, 17.

[74] Brief of California Central Valleys Flood Control Association, p. 6.

[75] Appendix, p. 61.

The residents of the district, whether landowners or not, are American citizens, and their share of that $234,512.24 is as great as anyone else's. Their taxes contributed to it, and their Government gave it to the district, which nevertheless denies them the right to vote.

8. The argument that none of the district's functions are of importance to residents.

> "It is apparent that these districts are not set up to serve people but to serve land."[76]
>
> "No people-oriented services are involved."[77]
>
> "The Appellee District was formed for the purpose of serving property not people; it in fact serves property not the people."[78]

From the inception of the Water Storage District Law in 1921, it has been recognized that one of its purposes was flood control. This is in no way surprising; the average California water organization seeks water in time of drought and fights it in time of flood. We accordingly find specific reference to flood control in the policy declarations of the California Water Storage district Law:[79]

> "It is hereby declared that the state of California has a paramount interest in the storage, conservation and diversion of water, *the prevention of floods,* the irrigation, drainage, and reclamation of land and the production of electric energy; and that such storage, conversation, diversion, irri-

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[76] Brief of California Central Valleys Flood Control Association, p. 4.

[77] Id. at p. 6.

[78] Id. at p. 7.

[79] Calif. Stats. 1921, c. 914, p. 1727.

gation, *prevention of floods,* reclamation, drainage, and production of electric energy will make productive vast quantities of land that are comparatively unproductive and will increase production, property valuations, and population in the state, make profitable the cultivation of small tracts and promote subdivision of larger tracts, and will promote the welfare and prosperity of all the people. The powers herein conferred upon the state engineer and board of directors are hereby declared to be police and regulatory powers and are *necessary to the accomplishment of a purpose that is indispensable to the public interests,* and the water storage districts hereunder provided to be formed are districts of the nature of irrigation, reclamation, or drainage districts in respect to all matters contemplated in the provisions of the Constitution of the state of California relating to irrigation, reclamation, or drainage."[80]

The Water Storage District Law was taken into the Water Code in 1951,[81] but reference to flood control continued to be express. See, e.g., Section 44001:

> "The cooperation and contract may be for any or all of the following purposes: (a) Construction, acquisition, purchase, extension, operation or maintenance of works for irrigation, drainage, storage, *flood control,* generation and distribution of hydroelectric energy incidental thereto, or any of these."

Shortly after passage of the California Water Storage District Law, litigation was filed to determine its validity, and the Supreme Court of California in 1923 handed down its decision in the case of *Tarpey* v. *McClure,*[82] which remains the leading case on water stor-

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[80] Calif. Stats. 1921, c. 914, § 58, p. 1766.

[81] Calif. Water Code, § 39000 ff.

[82] 190 Cal. 593, 213 Pac. 983 (1923).

age districts. The references in *Tarpey* v. *McClure* to the flood control purposes of the district are again express, as is the holding, by a court with a long experience in California water problems, that flood control and irrigation are but opposite sides of the same coin:

> "It is urged that the act violates the provisions of section 24, art. 4, of the Constitution, in that it embraces more than one subject. It would be impracticable to attempt here to set forth even an outline of its comprehensive provisions. It must suffice to say that it provides for the organization, operation, maintenance, and government of water storage districts; for the acquisition by various means, and the storage, conservation, and distribution of water for irrigation, and for drainage and reclamation connected therewith; and for the generation and disposition of hydro-electric energy developed incidental thereto. It also provides for the repeal of the California Irrigation Act of 1915 and all acts amendatory thereof. *The conservation of water by means of flood control works to restrain flood waters which otherwise would overflow the land and go to waste, and, incident thereto, the reclaiming of the lands which otherwise would be overflowed and rendered useless, the storage and distribution of such water for purposes of irrigation,* and, incident thereto, the generation and use of a hydro-electric energy as a by-product of such storage and distribution, *all seems to us to be so legitimately and intimately connected one with another as not to constitute different subjects within the purview of the Constitution. It may be said that in these respects the act has but a single object, to wit, the better control and utilization of water,* or stated differently, the reclamation and use of waste water, and, incident thereto, the reclamation and use of waste land."[88]

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[88] 213 Pac. at 986.

The district has made an express concession of its flood control powers in this litigation. In its printed trial brief filed June 10, 1971 the district described itself as "an agency authorized by the law of California to engage in the reclamation of wasteland through *flood protection,* drainage and irrigation works."[84] The importance of the district's flood control powers, and its relevance to the present issue, is that the district and the amici curiae now argue that it exists only to serve land, that it is not "people-oriented", and that its residents are not interested in or affected by its services. But there are few things of greater interest to a man than whether his dwelling, and that of his family, is going to be inundated.[85]

From its inception in 1926 until 1969 the district carried on numerous flood control activities. Plaintiff's Exhibit 5 received in evidence in the court below is a letter dated September 23, 1953 from the president of the district to the California State Engineer. This letter was not printed in the appendix, but it is in the record, and the report on the district's flood control

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[84] Trial Brief of defendant, p. 1.

[85] During the 1969 flood water in Tulare Lake Basin rose to a height of 192.5 U.S.G.S. datum, with 88,000 acres in the district flooded. [Appendix, page 40]. A comparison of Exhibit P, the map showing the location of the homes in the district, and Exhibit 2, a topographical map of Tulare Lake Basin (both of which have been reproduced in the Appendix following page 66), will show that the appellant Lawrence Ellison's residence in Section 19 was at 177 U.S.G.S. datum, or 15 ½ feet below the water level at the crest of the 1969 flood. Had the North Central Levee broken it is quite possible that a number of people would have been drowned; and these appellants respectfully submit that such persons would have been both interested in and affected by such a development.

activities for the years from 1938 to 1953 is many pages in length.[86]

Four rivers enter Tulare Lake Basin, the Kings, the Kern, the Tule, and the Kaweah.[87] The relationship between the Kern River and Tulare Lake Basin is shown on plaintiff's Exhibit 4, which has been reproduced in the Appendix, following page 66. Exhibit 4 also shows the location of Buena Vista Lake, which is in Kern County, south of Tulare Lake Basin.

The most important floods of the twentieth century were in 1906, 1917, 1937-38, 1952, and 1969.[88] The 1952 flood affords a prime example of the district's exercise of its flood control jurisdiction. The minutes of a meeting of the Board of Directors on April 1, 1952 state in part as follows:

> "Consulting Engineer Harding, in respect of conditions on Kern River during the current season, discussed with the Directors the protection that might be had against floods from that stream by the full use of Buena Vista Lake reservoir. He said that he understood the landowners in that area were planning to store considerable water in Buena Vista Lake and not to use the Lake area in 1952, for farming. He thought that Tulare Lake Basin Water Storage District should keep watch on what was done there, to see that Buena Vista Lake was fully used to store water from Kern River, because under normal, natural conditions

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[86] These references are available in the present record in a convenient form, in that they were excerpted and printed in the plaintiff's trial brief, running from page 43 to page 52 and that trial brief is in the record. These references are not being reprinted in the present brief because of their length.

[87] Appendix, p. 39.

[88] Appendix, pp. 39-41.

on Kern River a great deal of flood water from that River would flow into Buena Vista Lake. Finally, Director Stone moved and Director Salyer seconded the motion, and the motion carried unanimously for the adoption of a resolution as follows:

"RESOLUTION

"RESOLVED: That the Engineers of Tulare Lake Basin Water Storage District be and they are hereby instructed to keep a careful watch on flood flows in Kern River during the current season to see that Buena Vista Lake takes the full amount of water which properly should flow into it and there be stored and that, if such storage does not appear to be taking place, the President of the District be and he is hereby authorized to write a letter in the name of Tulare Lake Basin Water Storage District, to Buena Vista Water Storage District and to the owners of land in Buena Vista Lake informing them that Tulare Lake Basin Water Storage District and the owners of land within it insist that such storage of flood flows of Kern River shall be made in Buena Vista Lake and that if they are not made the responsible parties will be held liable for any damages which may arise in Tulare Lake Basin by the discharge into such Basin of waters which should have been stored in Buena Vista Lake." [89]

Pursuant to the resolution of April 1, 1952, Tulare Lake Basin Water Storage District gave Buena Vista Water Storage District and the owners of land in Buena Vista Lake written notice in accordance with the resolution above quoted, and the notices were acquiesced in by those receiving them. Buena Vista Lake was filled with the flood waters of the Kern River in 1952.[90]

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[89] Appendix, pp. 41, 42.

[90] Appendix, p. 43.

The relevance of the District's flood control powers and activities to the present case involves the flood of 1969. That flood was the greatest in the area since the legendary flood of 1906. Despite the dams on the Kings, Kern, Tule and Kaweah Rivers over a million acre feet of water entered Tulare Lake, and some 88,000 of the 193,000 acres in the District were flooded.[91] Three reclamation districts, much smaller units lying within the boundaries of Tulare Lake Basin Water Storage District, petitioned the District to call upon the interests controlling Buena Vista Lake to accept its proper share of this flood water, as had been done in the flood of 1952.[92] Historically the waters of extraordinary floods on the Kern River have first gone into Buena Vista Lake. After a trial which consumed years, with an intensive investigation of San Joaquin Valley geology reflected in some 30,000 pages of trial transcript, the Court in *Rank* v. *Krug*[93] stated as follows:

> "Buena Vista Lake is the sink for the Kern River, and Tulare Lake is the sink for all the others . . ."[94]

Keeping as much flood water as possible out of Tulare Lake Basin Water Storage District was of com-

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[91] Appendix, p. 40.

[92] Appendix, pp. 43-47. The location of these reclamation districts, Consolidated R.D. No. 812, North Central R.D. No. 2071, and Wilbur R.D. No. 825, is shown on Plaintiff's Exhibit 3, which has been reproduced in the Appendix following p. 66.

[93] 142 F.Supp. 1 (S.D. Cal. 1956), reversed on other grounds 372 U.S. 609 (1963)

[94] 142 F.Supp. at 44.

pelling interest to every landowner in the District, and to every man, woman and child therein, irrespective of landholding. But the weighted system of landowner voting made it possible for the six J. G. Boswell Company stockholders and employees on the Board of Directors to table a motion that the appropriate notices be given to the Buena Vista Lake interests on March 4, 1969. The minutes of that meeting are in the record as plaintiff's Exhibit 6.[95]

Erling Kloster, Esq., appeared at the District meeting on March 4, 1969 for the J. G. Boswell Company, and the language of the minutes is a succinct description of what happened then:

> "Attorney Kloster at this point made disclosures for the record as to the association of six of the directors with the J. G. Boswell Company indicating in some detail their stock ownerships and employee affiliations. The six directors were Armor, Barnes, Evers, Fisher, Robinson and Vandergriff. He stated further that he had advised these directors they were not disqualified to vote with reference to the Buena Vista matter."[96]

By virtue of the six Boswell votes, the motion made at that meeting to place the Buena Vista Lake interests on notice, and if necessary to proceed for injunctive relief, was tabled on a 6-4 vote, with each non-Boswell director voting against the motion to table. These included Ceil Howe, president of Westlake Farms, Edwin E. Anderson, Jr., an officer of South Lake Farms and Producers Cotton Oil Com-

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[95] Appendix, p. 48.

[96] Appendix, p. 48.

pany, and plaintiffs C. Everette Salyer and Fred Salyer.[97]

No notice was given by the District to the Buena Vista Lake interests, and for the first time in history Cell 3 of Buena Vista Lake, which comprises approximately 70 percent of its area and 85 percent of its storage capacity, received no waters from the Kern River in a flood year. The capacity of Buena Vista Lake is approximately 235,000 acre feet. This water entered Tulare Lake Basin in 1969 and added to the flood conditions already there.[98]

It may be asked why the Boswell directors took a position so contrary to the position taken by Tulare Lake Basin Water Storage District in the 1952 flood. The answer is that in 1969, unlike 1952, the J. G.

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[97] The ostensible reason given by the Boswell directors was an opinion by James G. McCain, Esq., counsel for the district, that the district had no legal power to engage in flood control activities or litigation. [See Plaintiffs Exhibit 6]. Mr. McCain is an able lawyer, but his opinion is subject to the comment that he is himself a Boswell attorney and stockholder. It will be observed from an inspection of Exhibit 5, the district letter of September 23, 1958, outlining fifteen years of flood control activities, that Mr. McCain was a member of the Board of Directors at the time that letter was prepared. He does not appear to have objected to the flood control activities of the district then engaged in. The power of the district to litigate is spelled out in Water Code, § 43700:

> "A district may commence and maintain any actions and proceedings to carry out its purposes or protect its interests and may defend in any action or proceedings brought against it."

Mr. McCain was also a member of the 1952 Board which gave notice to the Buena Vista Lake interests in the flood of that year. Directors Robinson and Armor were also members in 1952. [Appendix, p. 42]

[98] Appendix, pp. 40, 49.

Boswell Company was in possession of Buena Vista Lake under a long term agricultural lease.[99]

The Buena Vista Lake controversy was discussed in appellants' opening brief.[100] It has been studiously ignored in the briefs of the district and the amici curiae. There is a great deal of talk in those briefs about how it is necessary to preserve weighted voting in the interest of the landowners. Weighted voting did not preserve the interest of the landowners of Tulare Lake Basin in 1969. And the interest of the residents in the safety of their homes and persons was simply ignored.

CONCLUSION

In the opening brief these appellants suggested that the situation of Plaintiff Lawrence Ellison, the non-landowning resident of the District who is a voter and has long been interested in water problems, cannot be distinguished from the non-landowning bachelor who was interested in education, in *Kramer* v. *United Free School District.*[101] It is respectfully submitted that under the ruling in *Kramer,* Ellison should be permitted to vote.

The electorate, when selected, should have an equal franchise. The spectre the District envisions of abuses by multiplication of leases and multiplication of ownerships, should not deter overthrow of the present system. It is most unlikely that such abuses would take place, and in any event the case must be decided

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[99] Appendix, p. 43.

[100] Appellants' Brief, pp. 14-16.

[101] 395 U.S. 621 (1969).

on the record as it presently exists. The evidence of present abuse is real enough, and the question is whether a system such as that which obtains in Tulare Lake Basin Water Storage District can be tolerated any longer. Although Article IV, Section 4 of the Constitution, guaranteeing to "every State in this Union a Republican Form of Government" has been held not to be for judicial enforcement,[102] the clause at least shows us that the Framers had in mind. The ultimate question in this case is whether the president of the District will in the future be able to repeat to a public body what he said to the California Districts Securities Commission in 1967:

> "MR. ROBINSON: I know you shouldn't forecast elections and that causes me a little hesitancy to say what I am going to say.
>
> "*The eleven divisions in this large farming operation are completely controlled.* You are going to have the same eleven directors on Tuesday that you have got today—with one exception. One of the directors is having some health trouble and he is going to be replaced; but other than that, they are going to be the same eleven directors."
>
> * * *
>
> "MR. ROBINSON: Well, *I have no concern about the election.*
>
> "But suddenly if a new board of directors were to come in, why then I would have nothing but opinion. But I have no concern about the election. *The eleven divisions are controlled by people with enough votes to put back the same directors they have now*—including the two Salyers that are dissenting at this time. They will be returned; the other nine will be returned."[103]

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[102] *Baker* v. *Carr*, 369 U.S. 186 (1962).

[103] Appendix, pp. 61, 62.

It is respectfully submitted that that portion of the judgment below which was appealed from should be reversed, and sections 41000 & 41001 of the California Water Code be held unconstitutional.

C. Ray Robinson,
Thomas Keister Greer,
Counsel for Appellants.

December, 1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1069

ASSOCIATED ENTERPRISES, INC. and JOHNSTON FUEL LINES,

Appellants,

v.

TOLTEC WATERSHED IMPROVEMENT DISTRICT,

Appellee.

APPEAL FROM THE SUPREME COURT OF WYOMING

No. 71-1456

SALYER LAND COMPANY, *et al.*,

Appellants,

v.

TULARE LAKE BASIN WATER STORAGE DISTRICT,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION AND THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION SOUTH TEXAS PROJECT, FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*; AND BRIEF *AMICUS CURIAE*

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v.

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APPEAL FROM THE SUPREME COURT OF WYOMING

No. 71-1456

Salyer Land Company, *et al.*,

Appellants,

v.

Tulare Lake Basin Water Storage District,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

MOTION OF THE AMERICAN CIVIL LIBERTIES UNION AND THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION SOUTH TEXAS PROJECT FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The American Civil Liberties Union and South Texas Project of the ACLU Foundation have requested the parties in these cases to consent to filing the attached brief *amicus curiae* out of time. The Appellants in No. 71-1069 and the Appellee in No. 71-1456 have granted their consent; the Appellee in No. 71-1069 has denied consent.*

The American Civil Liberties Union is a nation-wide, nonpartisan organization of over 180,000 members dedicated solely to preservation of the liberties safeguarded by the Bill of Rights and the 13th, 14th and 15th Amendments to the United States Constitution. The South Texas Project of the ACLU Foundation is a recently created, separate affiliate of the ACLU. The primary purpose of the Project is to secure through litigation the rights of poor Chicanos who dwell in the lower Rio Grande Valley of Texas. Specifically, the project is designed to secure their rights to participate in the governance of the various state created and recognized Water Districts in the lower Rio Grande Valley, to enjoy an adequate supply of potable water, and otherwise to enjoy equally the civil rights and liberties guaranteed to all citizens and residents of the United States.

The lower Rio Grande Valley of Texas is the area at the Southern tip of Texas. Approximately 180,000 people reside in Hidalgo County, 140,000 people in Cameron County, 15-20,000 in Willacy County, and 15,000 in Starr County. About 80% of the approximately 350,000 odd persons in the Valley are Chicanos. Many of these people are migrant laborers who make the Valley their home when they are not migrating to pick crops. Approximately a

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* These letters have been filed with the Clerk of the Court.

Through inadvertence, consent from counsel for the Appellants in No. 71-1456 was not sought until earlier this week. When the response to that request has been received, it will be filed with the Clerk.

third of the Chicano population—perhaps as many as 100,000 people—live in groupings of small homesteads called *colonias*. The residents of the *colonias* are almost uniformly denied access to potable water and are denied the right to participate in elections of the some thirty-five Water Districts in the Valley.

The *colonias* consist of small lots subdivided from a common parcel and "sold" under land sale contracts. Typically the buyer advances a very small sum—perhaps five dollars—as a down payment, and is then obligated to pay a similar amount each month. Under this installment arrangement, the interest on the indebtedness alone often exceeds the payments on principal and in practical effect the buyer is more of a lifetime tenant than an owner. The lots within the *colonias* come equipped with virtually none of the amenities normally associated with developed land. There are rough roads, but no provision for water. Although often adjacent to cities, the *colonias* are unincorporated. Cf. *Hawkins* v. *Town of Shaw,* 437 F.2d 1286 (5th Cir. 1971).

The incorporated population centers and many of the larger farms in the four rural counties which comprise the Lower Rio Grande Valley are serviced by "Water Control Improvement Districts" and "Water Improvement Districts"; these are special purpose districts, created under authority of state statute which have the full range of powers normally associated with such districts, including the right to tax and to exercise the power of eminent domain. Through these districts, the residents of the incorporated areas have access to safe drinking water at reasonable prices. The water which is distributed by these districts is drawn from the Rio Grande and then purified in facilities owned and operated by the districts.

The majority of the *colonias* are not serviced by water districts. There are various means by which service is denied, but typically one of two factual patterns prevails. Often, a *colonias* is within the geographic borders of an extant water district, but the district has decided not to service the *colonias*. This common practice is made possible by the state statutes governing the elections of water district officers which either prohibit anyone but the owners and operators of farms from voting, or discourage others from voting, for example, by providing inadequate notice of elections. Accordingly, the residents of the *colonias* in no way comprise the constituency of the elected district officers. A second common pattern involves the delineation of water district lines in such a way that all agricultural land under production is included and adjacent or surrounded *colonias* are excluded. Under Art. 8280-3.2, Vernon's Ann. Tex. Civ. Stats. (1971), the Board of Directors of any Water Control and Improvement District may exclude any urban property (construed to include the *colonias*) by resolution. Various Water Districts have excluded *colonias* wholesale.

On December 15, 1972, the ACLU and the South Texas Project of the ACLU Foundation filed in the United States District Court for the Southern District of Texas, a civil rights class action for injunctive and declaratory relief challenging the exclusion of numerous *colonias* from the Hidalgo County Water Improvement District No. 2 (by resolution dated October 28, 1971) and the Hidalgo and Cameron Counties Water Control and Improvement District No. 9 (by resolutions and orders dated September 6 and October 17, 1972). *Jimenez, et al.* v. *Hidalgo County Water Improvement District No. 2, et al.*, and *Hidalgo* and *Cameron Counties* Water Control and Improvement District No. 9, Civ. Action No. 72-B-171 (U.S. D. Ct. S.D.

Tex.). Allegations are made in the complaint to support several causes of action under the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. §1983. *Colonias* have been unequally excluded from voting of Water Districts. See, e.g., *City of Phoenix* v. *Kolodziejski*, 399 U.S. 204 (1970); *Cipriano* v. *City of Houma*, 395 U.S. 701 (1969); *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621 (1969); *Harper* v. *Virginia State Board of Education*, 383 U.S. 663 (1966); see also, *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960); cf. *Evans* v. *Cornman*, 398 U.S. 419 (1970). Notice of elections and of resolutions to exclude the *colonias* from Water Districts have not conformed with the elementary requirements of due process of law. See, e.g., *Schroeder* v. *City of New York*, 371 U.S. 208 (1962); *Robinson* v. *Hanrahan*, 34 L. Ed.2d 47 (1972).

Because the issues before this Court in the instant cases are closely related to the issue being litigated on behalf of the impoverished Chicanos dwelling on the *colonias* in the Lower Rio Grande Valley, the *amicus curiae* respectfully prays leave to file this brief out of time.

Respectfully submitted,

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BRIEF OF AMERICAN CIVIL LIBERTIES UNION AND THE SOUTH TEXAS PROJECT OF THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION *AMICUS CURIAE*

Interest of *Amicus*

The interest of the *amicus* appears from the preceding motion.

Statement of the Case

This brief is submitted in two cases raising similar issues.

The first case, *Associated Enterprises, Inc., and Johnston Fuel Lines* v. *Toltec Watershed Improvement District*, No. 71-1069, comes from Wyoming. The Toltec Watershed District was organized under the provisions of Wyoming Statutes 1957 sections 41-354.1 through 41-354.26, which provide that only landowners may vote for the creation of a water district, and that before the district can be created it must be approved by voters who own a majority of acreage contained in the district of creation. Because Johnston Fuel Lines, a Wyoming corporation, does not own land but leases land from Associated Enterprises, Inc., Johnston was unable to vote in the referendum pursuant to which the Watershed Improvement District was created. After it was created, Toltec instituted an action against Associated for a right of entry upon lands owned by Associated and leased to Johnston. The entry was sought to conduct a feasibility study concerning the building of a reservoir on lands owned by Associated and leased to Johnston. Johnston intervened in the action and with Associated defended on the ground that the Toltec Watershed Improvement District was organized under a Wyoming statute which violated the Equal Protection Clause of the Wyoming and United States Constitution. The District Court in and for Albany County, Wyoming upheld the Wyoming Watershed Improvement Act, and on appeal the constitutionality of the Act was again affirmed, 490 P.2d 1069.

The second case is a direct appeal from a three-judge United States District Court in California. *Salyer Land Co., et al.* v. *Tulare Lake Basin Water Storage District,* No. 71-1456. The Tulare Lake Basin Water Storage District was organized under California Water Code Sections 39000-48401. Section 41000 provides, in effect, that only holders of title to land may vote in district elections. Section 41001 provides that each voter may cast one vote for every $100, or fraction thereof, of assessed valuation. Upon creation in 1926, the Tulare Lake Basin Water Storage District was divided into eleven divisions, or election districts, from each of which one member of the governing board is elected. There have been no changes in division boundaries since then.

One of the appellants is a large landowner and lessee of land within the district, one is a small landowner, one is a resident who owns no land, two are small landowners and members of the Board of Directors of the District. They sued under the Fourteenth Amendment and 42 U.S.C. Section 1983 to challenge limitation of voting to landowners within the District, the weighted voting, and malapportionment of voting divisions within the District.

The majority of the three-judge court ruled that limiting the vote to real property owners and weighting their votes according to assessed valuation does not violate the Equal Protection Clause, but that the election divisions within the Water Storage District were unconstitutionally malapportioned because no adjustment had been made in them for 40 years, despite great changes in assessed valuation among the divisions. Judge Browning dissented on the ground that the state unconstitutionally excluded lessees of real property within the District from voting in the elections.

ARGUMENT

A. *Exclusion*

Much of this Court's jurisprudence in the area of voting rights has been developed in cases scrutinizing state schemes, such as the ones here, which denied the franchise outright to certain citizens or groups. Such a judicial response is not surprising, for the right to vote, since it opens the door to the political process, has been the focus of much discrimination. Certain groups or classes were so historically the victims of that discrimination, such as blacks and women, that separate constitutional protection of their franchise was established (in the Fifteenth and Nineteenth Amendments). Yet even in the controversies concerning the franchise of such historically mistreated groups the Equal Protection Clause has loomed large and it is quite clear from our present perspective that much of what was guaranteed under those later Amendments could have been, and frequently was, accomplished under the Equal Protection Clause alone.

Thus, for example, the right of blacks to vote in party primaries is firmly established as a part of the guarantee of the Fifteenth Amendment. *Terry* v. *Adams*, 345 U.S. 461 (1953); *Smith* v. *Allwright*, 321 U.S. 649 (1944). But the same right is also a part of the Equal Protection Clause. *Nixon* v. *Condon*, 286 U.S. 73 (1932) (opinion by Cardozo, J.).

And while the right of blacks not to be disenfranchised by racial gerrymandering is easily found in the Fifteenth Amendment, *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960), the same result was independently available under the

Equal Protection Clause—as pointed out by Mr. Justice Whittaker, concurring in *Gomillion*. In fact, the theory that the Equal Protection Clause prevents a registrar of voters from refusing to register blacks because of their race was accepted as early as 1927 by Mr. Justice Holmes, writing for a unanimous Court in *Nixon* v. *Herndon*, 273 U.S. 536 (1927).

These cases are the core of the constitutional guarantee of the voting rights of traditionally disfavored groups. They all are, or could have been, equal protection cases. They are straightforward answers to the most obvious types of discrimination.

But just as there are many motives for discriminating at the polls beyond the fear or mistrust based on race or sex or religion, there are many disfavored groups, many neither historically disfavored nor permanently fixed, but carved out to suit some discriminatory goal. For these, too, the Equal Protection Clause has provided shelter. An obvious example is *Harper* v. *Virginia State Board of Education*, 383 U.S. 663 (1966), in which the Court struck down Virginia's poll tax as a violation of Equal Protection since it discriminated against the poor. This class is not one tied to race, sex, or religion, and the historical mistrusts they evoke. Its members are mobile; its boundaries are vague; it is a group that one may enter, or leave. The concept of Equal Protection was flexible enough to protect it.

Carrington v. *Rash*, 380 U.S. 89 (1965), illustrates the same flexibility. There the Court invalidated a Texas constitutional prohibition of voting by servicemen who entered Texas while in service, even though they might be bona fide residents. Here the protected group was even more

temporary than the "poor," and certainly neither historically suspect nor traditionally disfavored. But united by its condition—military status—it was entitled to equal protection.

Kramer v. *Union Free School District No. 15, supra,* continued the process of guaranteeing equal protection of the laws to groups denied the franchise in particular elections for less than compelling state interests or by methods unnecessary to what may or may not have been compelling interests. There the Court invalidated a New York statute which limited participation in school district elections to those who (1) owned or leased taxable real property in the district, (2) were married to one who so owned or leased, or (3) were the parents of or had custody of a child enrolled in a local district school. Pointing out that the petitioner, a bachelor who lived with his parents, was interested in and affected by the outcome of the elections but ineligible to vote in them, as were senior citizens, boarders, clergy, and others, the Court held that this latter group was denied equal protection by the statutory limitation.

More recently this Court decided two cases which, along with *Kramer,* are of obvious relevance here. Both involved local elections to pass upon revenue bonds, *Cipriano* v. *Houma,* 395 U.S. 701 (1969) and general obligation bonds, *Phoenix* v. *Kolodziejski,* 399 U.S. 204 (1970), from which otherwise qualified voters who were not property-taxpayers were excluded. In both, this Court held the excluded groups were entitled to equal protection, and rejected various asserted state interests proffered to justify denying a political voice to those groups. In reaching that result in *Kolodziejski,* the Court held that:

> The differences between the interest of property owners and the interests of non-property owners are not sufficiently substantial to justify excluding the latter from the franchise. 399 U.S. at 209.

The Court went on to reject as justifications several purportedly compelling interests which are virtually indistinguishable from those advanced here.

Cipriano and *Kolodziejski* are extremely important to the cases here because they are the first voting rights cases to apply an equal protection analysis to elections where citizens, instead of voting for public officials who will in turn determine public policy, are themselves passing directly upon questions of public policy. Thus, to the extent that the appellees here claim that persons who are excluded from voting or whose vote is depreciated are disabled in that manner because they have a diminished interest in the issues passed upon by the water districts, *Cipriano* and *Kolodziejski* undermine the districts' contentions. Moreover, in those two cases, this Court applied the rigorous equal protection standard invoked to test infringements of the right to vote, and demanded a showing that the exclusion of some voters was necessary to advance compelling state interests.

These cases demonstrate the willingness of this Court to expand the categories of protected groups far beyond those stable classes traditionally the victims of discrimination, into an infinite number of situations involving the selective distribution of the franchise. They also demonstrate that this Court will not tolerate schemes designed to deny the vote completely to certain groups and individuals.

B. *Dilution*

Relevant to this case is another doctrinal development, of more recent origin: the apportionment or one man-one vote cases. Beginning with the historic decision in *Baker* v. *Carr*, 369 U.S. 186 (1962), this Court has evinced an additional constitutional concern not merely with denial of a political voice to certain classes or citizens, but with *dilution* of that political voice. This second line of decisions involves state geographical districting systems which dilute the effectiveness of the franchise either directly or through the allocation of legislative representation.

Beginning in *Gray* v. *Sanders*, 372 U.S. 368 (1963), continuing in *Wesberry* v. *Sanders*, 376 U.S. 1 (1964) and culminating in *Reynolds* v. *Sims*, 377 U.S. 533 (1964) this Court developed the doctrine that each qualified voter is entitled to an equal voice in the political process. *Reynolds* was a doctrinal watershed where, building upon previous rulings which invalidated attempts to deny the franchise, this Court announced the rule that equal protection safeguarded against not only denial of the vote, but against dilution as well:

> Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote . . . and to have their votes counted. . . . The right to vote can neither be denied outright . . . nor destroyed by alteration of ballots . . . nor diluted by ballot-box stuffing . . . Racially based gerrymander-

> ing . . . and the conducting of white primaries, . . . both of which result in denying to some citizens their right to vote, have been held to be constitutionally impermissible. And history has seen a continuing expansion of the scope of the right of suffrage in this country. The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. *And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.* *Reynolds* v. *Sims, supra* at 554-55 (citations and footnotes omitted) (emphasis added).

The Court went on to spell out its concern with apportionment schemes which diluted the weight of a citizen's vote, depending on geographic residency:

> Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. . . . Weighting the votes of citizens differently, *by any method or means,* merely because of where they happen to reside, hardly seems justifiable.
>
> * * * * *
>
> Full and effective participation by all citizens in state government requires, therefore, that each citizen have *an equally effective voice* in the election of members

> of his state legislature. Modern and viable state government needs, and the Constitution demands, no less. 377 U.S. at 563-565 (emphasis added).

In numerous cases since then, the Court has utilized this equal voice doctrine, or one man one vote, to require almost absolute equality in population of legislative districts in order to insure that there will be no dilution of the electoral influence of each voter. See, *e.g.*, *Wells* v. *Rockefeller*, 394 U.S. 542 (1969). More relevantly, the dilution doctrine has also been applied to elections for local governing bodies, legislative or governmental. See, *e.g.*, *Avery* v. *Midland County*, 390 U.S. 474 (1968); *Hadley* v. *Junior College District*, 397 U.S. 50 (1970). In *Hadley*, the Court summarized its prior rulings as establishing the principle that "a qualified voter has a constitutional right to vote in elections without having his vote wrongfully denied, debased or diluted" and that all voters had the right "to have their votes given the same weight as that of other voters." 397 U.S. at 52. The Court continued:

> This Court has consistently held in a long series of cases, that in situations involving elections, the States are required to insure that each person's vote counts as much, insofar as it is practicable, as any other person's. We have applied this principle in congressional elections, and local elections. The consistent theme of those decisions is that the right to vote in an election is protected by the United States Constitution against dilution or debasement. 397 U.S. at 54 (footnote omitted).

See also, *Kramer* v. *Union Free School District No. 15*, *supra* ("Thus, state apportionment statutes, which may *dilute* the effectiveness of some citizens' votes, receive close

scrutiny from this Court. . . . No less rigid an examination is applicable to statutes *denying* the franchise to citizens who are otherwise qualified by residence and age." 395 U.S. at 626 [emphasis in original]).

Nor did this Court's decision in *Gordon* v. *Lance*, 403 U.S. 1 (1971) undermine these premises or depart from these traditions.

There, this Court upheld constitutional and statutory provisions which required that referenda to incur state financial indebtedness obtain the approval of 60 per cent of those voting. In so ruling, this Court reaffirmed the principle that "denial or dilution of voting power" could not be premised on "group characteristics—geographical location and property ownership—which bore no valid relation to the interest of those groups in the subject matter of the election . . . " 403 U.S. at 4. Indeed, the Court viewed *Cipriano* as "a reassertion of the principle, consistently recognized, that an individual may not be denied access to the ballot because of some extraneous condition such as . . . wealth . . . ", *id.* at 5, and went on to note:

> While *Cipriano* involved a denial of the vote, a percentage reduction of an individual's voting power in proportion to the amount of property he owned would be similarly defective. 403 U.S. at 4, n. 1.

Thus, *Gordon* v. *Lance* restates this Court's condemnation of schemes which utilize financial requirements to deny or dilute voting power.*

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* The decision in *Gordon* v. *Lance* rests, in part, on the fact that extramajoritarian requirements are embodied in the federal and various state Constitutions. Similarly, the decision in *James* v. *Valtierra*, 402 U.S. 137 (1971) was partly premised on the democratic value of utilizing referenda.

And again last Term, this Court rejected the twin constitutional evils—total exclusion of a class of citizens from the election process and conditioning access to the ballot on wealth—which are embodied in the Wyoming and California statutes.

In *Dunn* v. *Blumstein*, 405 U.S. 330, 31 L. Ed.2d 274 (1972) this Court struck down a requirement of durational residency as a precondition to voting. The Court summed up the applicable principles in the following way:

> Durational residency requirements completely bar from voting all residents not meeting the fixed durational standards. By denying some citizens the right to vote, such laws deprive them of "a fundamental political right, . . . preservative of all rights." There is no need to repeat now the labors undertaken in earlier cases to analyze this right to vote and to explain in detail the judicial role in reviewing state statutes which selectively distribute the franchise. In decision after decision this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. This "equal right to vote" is not absolute; the states have the power to impose voter qualifications, and to regulate access to the franchise in other ways. But, as a general matter, "before that right [to vote] can be restricted, the purpose of the restriction and the assertedly overriding interests served by it must meet close constitutional scrutiny." 31 L. Ed.2d at 284 (citations omitted).

The Court then considered the suggested justifications for a durational residency requirement and held that none of

them was necessary to the accomplishment of compelling state interests.

And in *Bullock* v. *Carter*, 405 U.S. 134, 31 L. Ed.2d 92 (1972) the Court rejected the imposition of direct financial obstacles on access to the ballot. In invalidating excessive filing fee requirements in primary elections, the Court noted that a system which based voting power on wealth, even indirectly, "falls with unequal weight on voters . . . according to their economic status." 31 L. Ed.2d at 100. By contrast, the system here directly and explicitly discriminates against voters "according to their economic status."

C. *The Application of the Two Principles*

Dunn v. *Blumstein* and *Bullock* v. *Carter* reaffirm the two principles from which this Court has not wavered—that absent the most persuasive reasons the state may not deny the vote to any class of citizens or dilute the voting power of citizens on the basis of their financial status.

As the Court's review of its precedents makes clear, it has been preoccupied with the equal protection ramification of both denial and dilution of the right to vote. It has refused to tolerate the exclusion of voters from elections for public officials or from elections where voters are asked to pass directly upon public questions. And the Court has also made it clear that it will be similarly vigilant against schemes which dilute the vote of particular citizens or groups. From these two separate doctrinal strands, a unifying principle emerges: the definition of those who will be entitled to participate in a particular election is subject to rigorous scrutiny to determine whether anyone has been

improperly excluded, and once the electorate for any given election is defined in a constitutional manner, each voter is entitled to an equal voice in the outcome.

The statutes here run afoul of these principles. They presume that only landowners have a cognizable interest in the water resources policies of the community and that that interest is directly proportional to the amount of their holdings. Such reasoning not only reflects a kind of economic royalism abhorrent to our constitutional principles, but it is simply not true. As the motion preceding this brief makes clear, the water resources policies in a given area can be literally vital matters, i.e., matters of life and death, to all residents of the region. When the decision-making process of a local governmental unit, even one with a specialized function, can have such an impact on people, they must not be excluded from the election of its officials. See *Kramer* v. *Union Free School District, supra.*

CONCLUSION

The decisions below should be reversed.

Respectfully submitted,

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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

SALYER LAND CO. ET AL. *v.* TULARE WATER DISTRICT

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

No. 71-1456. Argued January 8, 1973—Decided March 20, 1973

Appellee district exists for the purpose of acquiring, storing, and distributing water for farming in the Tulare Lake Basin. Only landowners are qualified to elect the district's board of directors, votes being apportioned according to the assessed valuation of the lands. A three-judge District Court, against challenge by appellants, held that the limitation of the franchise to landowners comported with equal protection requirements. *Held:*

1. Restricting the voters to landowners who may or may not be residents does not violate the principle enunciated in such cases as *Reynolds* v. *Sims*, 377 U. S. 533, and *Kramer* v. *Union School District*, 395 U. S. 621, that governing bodies should be selected in a popular election in which every person's vote is equal. Pp. 6–11.

(a) The activities of appellee district fall so disproportionately on landowners as a group that it is not unreasonable that the statutory framework focuses on the land benefited, rather than on people as such. Pp. 6–10.

(b) Although appellee district has some governmental powers, it provides none of the general public services ordinarily attributed to a governing body. Pp. 9–10.

2. Since assessments against landowners are the sole means by which expenses of appellee district are paid, it is not irrational to repose the franchise in landowners but not residents. Pp. 11–12.

3. The exclusion of lessees from voting does not violate the Equal Protection Clause since the short-term lessee's interest may be substantially less than that of a landowner and, the franchise being exercisable by proxy, other lessees may negotiate to have the franchise included in their leases. Pp. 13–14.

4. Weighing the vote according to assessed valuation of the land does not evade the principle that wealth has no relation to voter

qualifications where, as here, the expense as well as the benefit is proportional to the land's assessed value. Pp. 14–15.

342 F. Supp. 144, affirmed.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, WHITE, BLACKMUN, and POWELL, JJ., joined. DOUGLAS, J., filed a dissenting opinion, in which BRENNAN and MARSHALL, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 71-1456

Salyer Land Company et al., Appellants, *v.* Tulare Lake Basin Water Storage District.	On Appeal from the United States District Court for the Eastern District of California.

[March 20, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This is another in the line of cases in which the Court has had occasion to consider the limits imposed by the Equal Protection Clause of the Fourteenth Amendment on legislation apportioning representation in state and local governing bodies and establishing qualifications for voters in the election of such representatives. *Reynolds v. Sims*, 377 U. S. 533 (1964), enunciated the constitutional standard for apportionment of state legislatures. Later cases such as *Avery* v. *Midland County*, 390 U. S. 474 (1968), and *Hadley* v. *Junior College District*, 397 U. S. 50 (1970), extended the *Reynolds* rule to the governing bodies of a county and of a junior college district, respectively. We are here presented with the issue expressly reserved in *Avery, supra:*

> "Were the [county's governing body] a special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents, we would have to confront the question whether such bodies may be apportioned in ways which give greater influence to the

citizens most affected by the organization's functions." 390 U. S., at 483–484.

The particular type of local government unit whose organization is challenged on constitutional grounds in this case is a water storage district, organized pursuant to the California Water Storage District Act, Calif. Water Code, §§ 39000, *et seq.* The peculiar problems of adequate water supplies faced by most of the western third of the Nation have been described by Mr. Justice Sutherland, who was himself intimately familiar with them, in *California Oregon Power Co.* v. *Beaver Portland Cement Co.*, 295 U. S. 142, 156–157 (1935):

> "These states and territories comprised the western third of the United States—a vast empire in extent, but still sparsely settled. From a line east of the Rocky Mountains almost to the Pacific Ocean, and from the Canadian border to the boundary of Mexico—an area greater than that of the original thirteen states—the lands capable of redemption, in the main, constituted a desert, impossible of agricultural use without artificial irrigation.
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> "In the beginning, the task of reclaiming this area was left to the unaided efforts of the people who found their way by painful effort to its inhospitable solitudes. These western pioneers, emulating the spirit of so many others who had gone before them in similar ventures, faced the difficult problem of wresting a living and creating homes from the raw elements about them, and threw down the gage of battle to the forces of nature. With imperfect tools, they built dams, excavated canals, constructed ditches, plowed and cultivated the soil, and transformed dry and desolate lands into green fields and leafy orchards. . . ."

Californians, in common with other residents of the West, found the State's rivers and streams in their natural state to present the familiar paradox of feast or famine. With melting snow in the high mountains in the spring, small streams became roaring freshets, and the rivers they fed carried the potential for destructive floods. But with the end of the rainy season in the early spring, farmers depended entirely upon water from such streams and rivers until the rainy season again began in the fall. Long before that time, however, rivers which ran bank full in the spring had been reduced to a bare trickle of water.

It was not enough, therefore, for individual farmers or groups of farmers to build irrigation canals and ditches which depended for their operation on the natural flow of these streams. Storage dams had to be constructed to impound in their reservoirs, the flow of the rivers at flood stage, for later release during the dry season regimen of the these streams. For the construction of major dams to facilitate the storage of water for irrigation of large areas, the full resources of the State and frequently of the Federal Government were necessary.[1]

But for less costly projects which would benefit a more restricted geographic area, the State was frequently either unable or unwilling to pledge its credit or its resources. The California Legislature, therefore, has authorized a number of instrumentalities, including water storage districts such as the appellee here, to provide a local response to water problems.

Some history of the experience of California and the other Western States with the problems of water distri-

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[1] The history of the vast central valley project in California is recounted in *United States* v. *Gerlach Livestock Co.*, 339 U. S. 725 (1950).

bution is contained in *Fallbrook Irrigation District* v. *Bradley*, 164 U. S. 112, 151–154 (1896), in which the constitutionality of California's Wright Act was sustained against claims of denial of due process under the Fourteenth Amendment to the United States Constitution. While the irrigation district was apparently the first local governmental unit authorized to deal with water distribution, it is by no means the only one. General legislation in California authorizes the creation not only of irrigation districts, but of water conservation districts, water storage and conservation districts, flood control districts, and water storage districts such as appellee.[2]

Appellee district consists of 193,000 acres of intensively cultivated, highly fertile farm land located in the Tulare Lake Basin. Its population consists of 77 persons, including 18 children, most of whom are employees of one or another of the four corporations that farm 85% of the land in the district.

Such districts are authorized to plan projects and execute approved projects "for the acquisition, appropriation, diversion, storage, conservation, and distribution of water . . . ." Calif. Water Code § 42200, *et seq.*[3] Incidental to this general power, districts may "acquire, improve, and operate" any necessary works for the storage and distribution of water as well as any drainage or reclamation works connected therewith, and the genera-

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[2] Clark, "Waters and Water Rights," Vol. 4, § 345.3.

[3] The actual adoption of district projects is long and involved. After a district undertakes a project, it must be approved by the California Department of Water Resources. Calif. Water Code §§ 42200, *et seq.* A report and the estimated cost of the project must be submitted to the California State Treasurer who undertakes an independent investigation before declaring the project abandoned or approving the report. *Id.* §§ 42275, *et seq.* If the report is approved, a "special election" is called. *Id.* §§ 42325, *et seq.* In order for the project to be finally adopted, a majority of the votes and a majority of the voters must approve it. *Id.* §§ 42355–42550.

tion and distribution of hydroelectric power may be provided for.[4] *Id.*, §§ 43000, 43025. They may fix tolls and charges for the use of water and collect them from all persons receiving the benefit of the water or other services in proportion to the services rendered. *Id.* § 43006. The costs of the projects are assessed against district land in accordance with the benefits accruing to each tract held in separate ownership. *Id.* §§ 46175, 46176. And land that is not benefited may be withdrawn from the district on petition. *Id.* § 48029.

Governance of the districts is undertaken by a board of directors. *Id.* § 40658. Each director is elected from one of the divisions within the district, *id.* § 39929, and each must take an official oath and execute a bond. *Id.* § 40301. General elections for the directors are to be held in odd-numbered years. *Id.* §§ 39027, 41300, *et seq.*

It is the voter qualification for such elections that appellants claim invidiously discriminate against them and persons similarly situated. Appellants are landowners, a landowner-lessee, and residents within the area included in the appellee's water storage district. They brought this action under 42 U. S. C. § 1983, seeking declaratory and injunctive relief in an effort to prevent appellee from giving effect to certain provisions of the California Water Code. They allege that §§ 41000[5] and 41001[6] unconstitutionally deny to them the equal protection of the laws guaranteed by the Fourteenth Amend-

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[4] There is no evidence that the appellee district engages in the generation, sale or distribution of hydroelectirc power.

[5] Calif. Water Code § 41000 provides:

"Only the holders of title to land are entitled to vote at a general election."

[6] Calif. Water Code § 41001 provides:

"Each voter may vote in each precinct in which any of the land owned by him is situated and may cast one vote for each one hundred dollars ($100), or fraction thereof, worth of his land, exclusive of improvements, minerals, and mineral rights therein, in the precinct."

ment, in that only landowners are permitted to vote in water storage district general elections, and votes in those elections are apportioned according to the assessed valuation of the land. A three-judge court was convened pursuant to 28 U. S. C. § 2284, and the case was submitted on factual statements of the parties and briefs, without testimony or oral argument. A majority of the District Court held that both statutes comported with the dictates of the Equal Protection Clause, and appellants have appealed that judgment directly to this Court under 28 U. S. C. § 1253.

In *Williams* v. *Rhodes*, 393 U. S. 23 (1968), a case in which the Ohio legislative scheme for regulating the electoral franchise was challenged, the Court said:

> ". . . [t]his Court has firmly established the principle that the Equal Protection Clause does not make every minor difference in the application of laws to different groups a violation of our Constitution. But we have also held many times that 'invidious' distinctions cannot be enacted without a violation of the Equal Protection Clause. In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances behind the law, the interests which the state claims to be protecting, and the interests of those who are disadvantaged by the classification." *Id.*, at 30.

We therefore turn now to the determination of whether the California statutory scheme establishing water storage districts violate the Equal Protection Clause of the Fourteenth Amendment.

I

It is first argued that § 41000, limiting the vote to district landowners, is unconstitutional since nonlandowning residents have as much interest in the operations of

a district as landowners who may or may not be residents. Particularly, it is pointed out that the homes of residents may be damaged by floods within the district's boundaries, and that floods may, as with appellant Ellison, cause them to lose their jobs. Support for this position is said to come from the recent decisions of this Court striking down various state laws that limited voting to landowners, *Phoenix* v. *Kolodziejski*, 399 U. S. 204 (1970), *Cipriano* v. *City of Houma*, 395 U. S. 701 (1969), and *Kramer* v. *Union School District*, 395 U. S. 621 (1969).

In *Kramer*, the Court was confronted with a voter qualification statute for school district elections that limited the vote to otherwise qualified district residents who were either (1) the owners or lessees of taxable real property located within the district, (2) spouses of persons owning qualifying property, or (3) parents or guardians of children enrolled for a specified time during the preceding year in a local district school. Without reaching the issue of whether or not a State may in some circumstances limit the exercise of the franchise to those primarily interested or primarily affected by a given governmental unit, it was held that the above classifications did not meet that state-articulated goal since they excluded many persons who had distinct and direct interests in school meeting decisions and included many persons who had, at best, remote and indirect interests. 395 U. S., at 632–633.

Similarly, in *Cipriano* v. *City of Houma*, *supra*, decided the same day, provisions of Louisiana law which gave only property taxpayers the right to vote in elections called to approve the issuance of revenue bonds by a municipal utility were declared violative of the Equal Protection Clause since the operation of the utility systems affected virtually every resident of the city, not just the 40% of the registered voters who were also

property taxpayers, and since the bonds were not in any way financed by property tax revenue. 395 U. S., at 705. And the rationale of *Cipriano* was expanded to include general obligation bonds of municipalities in *Phoenix* v. *Kolodziejski*, *supra*. It was there noted that not only did those persons excluded from voting have a great interest in approving or disapproving municipal improvements, but they also contributed both directly through local taxes and indirectly through increased rents and costs to the servicing of the bonds. 399 U. S., at 210–211.

Cipriano and *Phoenix* involved application of the "one person, one vote" principle to residents of units of local governments exercising general governmental power, as that term was defined in *Avery* v. *Midland County*, 390 U. S. 474 (1968). *Kramer* and *Hadley* v. *Junior College District*, 397 U. S. 50 (1970), extended the "one person, one vote" principle to school districts exercising powers which the Court described in this language:

> "while not fully as broad as those of the Midland County Commissioners, certainly show that the trustees perform important governmental functions within the districts, and we think these powers are general enough and have sufficient impact throughout the district to justify the conclusion that the principle which we applied in *Avery* should also be applied here." 397 U. S. 50, 53–54.

But the Court was also careful to state that:

> "It is of course possible that there might be some case in which a state elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionally affect different groups that a popular election in compliance with *Reynolds*, *supra*, might not be required, but certainly we see nothing in the present case that indicates that the activities of these trustees

fit in that category. Education has traditionally been a vital governmental function, and these trustees, whose election the State has opened to all qualified voters, are governmental officials in every relevant sense of that term." 397 U. S., at 56.

We conclude that the appellee water storage district, by reason of its special limited purpose and of the disproportionate effect of its activities on landowners as a group, is the sort of exception to the rule laid down in *Reynolds* which the quoted language from *Hadley, supra,* and the decision in *Avery, supra,* contemplated.

The appellee district in this case, although vested with some typical governmental powers,[7] has relatively limited authority. Its primary purpose, indeed the reason for its existence, is to provide for the acquisition, storage, and distribution of water for farming in the Tulare Lake Basin.[8] It provides no other general public services such as schools, housing, transportation, utilities,

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[7] The board has the power to employ and discharge persons on a regular staff and to contract for the construction of district projects. Calif. Water Code § 43152. It can condemn private property for use in such projects, *id.* §§ 43530–43533, may cooperate (including contract) with other agencies, state and federal. *Id.* § 43151. Both general obligations bonds and interest-bearing warrants may be authorized. *Id.* §§ 44900–45900.

[8] Appellants strongly urge that districts have the power to, and do, engage in flood control activities. The interest of such activities to residents is said to be obvious since houses may be destroyed and, as in the case of appellant Ellison, jobs may disappear. But Calif. Water Code § 43151 provides that any agreement entered into with the State or the United States must be "for a purpose appertaining to or beneficial to the project of the district. . . ." And the statute which assertedly gives support to the flood control activities, *id.* § 44001, simply states that a district "may cooperate and contract with the state . . . or the United States" for the purpose of "flood control." Thus, any flood control activities are incident to the exercise of the district's primary functions of water storage and distribution.

roads or anything else of the type ordinarily financed by a municipal body. App. p. 86. There are no towns, shops, hospitals or other facilities designed to improve the quality of life within the district boundaries and it does not have a fire department, police, buses, or trains. *Ibid.*

Not only does the district not exercise what might be thought of as "normal governmental" authority, but its actions disproportionately affect landowners. All of the costs of district projects are assessed against land by assessors in proportion to the benefits received. Likewise, charges for services rendered are collectible from persons receiving their benefit in proportion to the services. When such persons are delinquent in payment, just as in the case of delinquency in payments of assessments, such charges become a lien on the land. Calif. Water Code §§ 47183, 46280. In short, there is no way that the economic burdens of district operations can fall on residents *qua* residents, and the operations of the districts primarily affect the land within their boundaries.[9]

Under these circumstances it is quite understandable that the statutory framework for election of directors of the appellee focuses on the land benefited, rather than on people as such. California has not opened the franchise to all residents, as Missouri had in *Hadley, supra*, nor to all residents with some exceptions, as New York had in *Kramer*. The franchise is extended to landowners, whether they reside in the district or out of it,

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[9] Appellants point out that since the flood of 1969, the district has received about $250,000 in flood relief funds from the Federal Government and that the residents, like every other American citizen, have paid their share of that money and are therefore entitled to vote. Cf. *Phoenix* v. *Kolodziejski, supra*. But their status as district residents bears no more relation to the flood relief money than that of any other United States citizen and would seem to provide no more compelling reason for granting such residents the right to vote than the citizenship at large.

and indeed whether or not they are natural persons who would be entitled to vote in a more traditional political election. Appellants do not challenge the enfranchisement of nonresident landowners or of corporate landowners for purposes of election of the directors of appellee. Thus to sustain their contention that all residents of the district must be accorded a vote would not result merely in the striking down of an exclusion from what was otherwise a delineated class, but would instead engraft onto the statutory scheme a wholly new class of voters in addition to those enfranchised by the statute.

We hold, therefore, that the popular election requirements enunciated by *Reynolds, supra,* and succeeding cases are inapplicable to elections such as the general election of appellee Water Storage District.

II

Even though appellants derive no benefit from the *Reynolds* and *Kramer* lines of cases, they are, of course, entitled to have their equal protection claim assessed to determine whether the State's decision to deny the franchise to residents of the district while granting it to landowners was "wholly irrelevant to achievement of the regulation's objectives," *Kotch* v. *Port Board of River Pilot Commissioners,* 330 U. S. 552, 556 (1947). No doubt residents within the district may be affected by its activities. But this argument proves too much. Since assessments imposed by the district become a cost of doing business for those who farm within it, and that cost must ultimately be passed along to the consumers of the produce, food shoppers in far away metropolitan areas are to some extent likewise "affected" by the activities of the district. Constitutional adjudication cannot rest on any such "house that Jack built" foundation, however. The California Legislature could quite reasonably have concluded that the number of landowners

and owners of sufficient amounts of acreage whose consent was necessary to organize the district would not have subjected their land to the lien of its possibly very substantial assessments unless they had a dominant voice in its control. Since the subjection of the owners' lands to such liens was the basis by which the district was to obtain financing, the proposed district had as a practical matter to attract landowner support. Nor, since assessments against landowners were to be the sole means by which the expenses of the district were to be paid, could it be said to be unfair or inequitable to repose the franchise in landowners but not residents. Landowners as a class were to bear the entire burden of the district's costs, and the State could rationally conclude that they to the exclusion of residents should be charged with responsibility for its operation. We conclude, therefore, that nothing in the Equal Protection Clause precluded California from limiting the voting for directors of appellee district by totally excluding those who merely reside within the district.

III

Appellants assert that even if residents may be excluded from the vote, lessees who farm the land have interests that are indistinguishable from those of the landowners. Like landowners they take an interest in increasing the available water for farming, and because the costs of district projects may be passed on to them either by express agreement or by increased rentals, they have an equal interest in the costs.

Lessees undoubtedly do have an interest in the activities of appellee district analogous to that of landowners in many respects. But in the type of special district we now have before us, the question for our determination is not whether or not we would have lumped them together had we been enacting the statute in

question, but instead whether "if any state of facts reasonably may be conceived to justify" California's decision to deny the franchise to lessees while granting it to landowners. *McGowan* v. *Maryland*, 366 U. S. 420, 425–426 (1961).

The term "lessees" may embrace the holders of a wide spectrum of leasehold interests in land, from the month-to-month tenant holding under an oral lease, on the one hand, to the long-term lessee holding under a carefully negotiated written lease, on the other. The system which permitted a lessee for a very short term to vote might, because of the ease with which large landowners could create such short-term interests on the part of loyal employees, easily lend itself to manipulation on the part of large landowners. And even apart from the fear of such manipulation, California may well have felt that landowners would be unwilling to join in the forming of a water storage district if short-term lessees whose fortunes were not in the long run tied to the land were to have a major vote in the affairs of the district.

The administration of a voting system which allowed short term lessees to vote could also pose significant difficulties. Apparently, assessment roles as well as state and federal land lists are used by election boards in determining the qualifications of the voters. Calif. Water Code, § 41016. Such lists, obviously, would not ordinarily disclose either long- or short-term leaseholds. While reference could be made to appropriate conveyancing records to determine the existence of leases which had been recorded, leases for terms less than one year need not be recorded under California law in order to preserve the right of the lessee. Calif. Civil Code § 1214.

Finally we note that California has not left the lessee without remedy for his disenfranchised state. Sections 41002 and 41005 of the California Water Code provide for voting in the general election by proxy. To the

extent that a lessee entering into a lease of substantial duration, thereby likening his status more to that of a landowner, feels that the right to vote in the election of directors of the district is of sufficient import to him, he may bargain for that right at the time he negotiates his lease. And the longer the term of the lease, and the more the interest of the lessee becomes akin to that of the landowner, presumably the more willing the lessor will be to assign his right. Just as the lessee may by contract be required to reimburse the lessor for the district assessments so he may by contract acquire the right to vote for district directors.

Under these circumstances, the exclusion of lessees from voting in general elections for the directors of the district does not violate the Equal Protection Clause.

IV

The last claim by appellants is that § 41001, which weights the vote according to assessed valuation of the land, is unconstitutional. They point to the fact that several of the smaller landowners only have one vote per person whereas the J. G. Boswell Company has 37,825 votes, and they place reliance on the various decisions of this Court holding that wealth has no relation to resident-voter qualifications and that equality of voting power may not be evaded. See, *e. g.*, *Gray* v. *Sanders*, 372 U. S. 368 (1963); *Harper* v. *Virginia State Board of Elections*, 383 U. S. 663 (1966).

Appellants' argument ignores the realities of water storage district operation. Since its formation in 1926, appellee district has put into operation four multi-million-dollar projects. The last project involved the construction of two laterals from the Basin to the California State Aqueduct at a capital cost of about $2,500,000. Three small landowners having land aggregating somewhat under four acres with an assessed valuation of under

$100 were given one vote each in the special election held for the approval of the project. The J. G. Boswell Company, which owns 61,665.54 acres with an assessed valuation of $3,782,220 was entitled to cast 37,825 votes in the election. By the same token, however, the assessment commissioners determined that the benefits of the project would be uniform as to all of the acres affected, and assessed the project equally as to all acreage. Each acre has to bear $13.26 of cost and the three small landowners, therefore, must pay a total of $46, whereas the Company must pay $817,685 for its part.[10] Thus, as the District Court found, "the benefits and burdens to each landowner are in proportion to the assessed value of the land." We cannot say that the California legislative decision to permit voting in the same proportion is not rationally based.

Accordingly, we affirm the judgment of the three-judge District Court and hold that the voter qualification statutes for California water storage district elections are rationally based, and therefore do not violate the Equal Protection Clause.

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[10] As was pointed out in n. 3, small landowners are protected from crippling assessments resulting from district projects by the dual vote which must be taken in order to approve a project. Not only must a majority of the votes be cast for approval, but also a majority of the voters must approve. In this case about 190 landowners constitute a majority and 190 of the smallest landowners in the district have only 2.34% of the land.

SUPREME COURT OF THE UNITED STATES

No. 71-1456

Salyer Land Company et al., Appellants, *v.* Tulare Lake Basin Water Storage District.	On Appeal from the United States District Court for the Eastern District of California.

[March 20, 1973]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

The vices of this case are four-fold.

First. Lessees of farmlands, though residents of the district, are not given the franchise.

Second. Residents who own no agricultural lands but live in the district and face all the perils of flood which the district is supposed to control are disfranchised.

Third. Only agricultural landowners are entitled to vote and their vote is weighted, one vote for each one hundred dollars of assessed valuation as provided in § 41001 of the California Water Code.

Fourth. The corporate voter is put in the saddle.

There are 189 landowners who own up to 80 acres each. These 189 represent 2.34% of the agricultural acreage of the district. There are 193,000 acres in the district. Petitioner Salyer Land Company is one large operator, West Lake Farms and South Lake Farms are also large operators. The largest is J. G. Boswell Co. These four farm almost 85% of all the land in the district. Of these J. G. Boswell Co. commands the greatest number of votes, 37,825, which are enough to give it a majority of the board of directors. As a result it is permanently

in the saddle. Almost all of the 77 residents of the district are disfranchised. The hold of J. G. Boswell Co. is so strong that there has been no election since 1947, making little point of the provision in § 41300 of the California Water Code for an election every other year.

The result has been calamitous to some, who though landless have even more to fear from floods than the ephemeral corporation.

I

In *Phoenix* v. *Kolodjiezski*, 399 U. S. 204, 209, we set out the following test for state election schemes which selectively distribute the franchise:

> "Presumptively, when all citizens are affected in important ways by a governmental decision subject to a referendum, the Constitution does not permit weighted voting or the exclusion of otherwise qualified citizens from the franchise."

Provisions authorizing a selective franchise are disfavored, because they "always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives." *Kramer* v. *Union Free School District*, 395 U. S. 623, 627. In order to overcome this strong presumption, it had to be shown up to now (1) that there is a compelling state interest for the exclusion, and (2) that the exclusions are necessary to promote the State's articulated goal. *Phoenix* v. *Kolodjiezski*, *supra*; *Cipriano* v. *City of Houma*, 395 U. S. 701; *Kramer* v. *Union Free School District*, *supra*. See also *Police Jury of Vermillion Parish* v. *Hebert*, 404 U. S. —; *Parish School Board of St. Charles* v. *Stewart*, 310 F. Supp. 1172, aff'd, 400 U. S. 884. In my view, appellants in this case have made a sufficient showing to invoke the above principles, and the presumption thus established has not been overcome.

Assuming *arguendo* that a State may, in some circumstances, limit the franchise to that portion of the electorate "primarily affected" by the outcome of an election, *Kramer* v. *Union Free School District, supra*, at 632, the limitation may only be upheld if it is demonstrated that "all those excluded are in fact substantially less interested or affected than those the [franchise] includes." *Ibid.* The majority concludes that "there is no way that the economic burdens of district operations can fall on residents qua residents, and the operations of the districts primarily affect the land within their boundaries."

But with all respect that is a great distortion. In these arid areas of our Nation a water district seeks water in time of drought and fights it in time of flood. One of the functions of water districts in California is to manage flood control. That is general California statutory policy.[1] It is expressly stated in the Water Code that governs water districts.[2] The California Supreme Court ruled some years back that flood control and irrigation are different but implementary aspects of one problem.[3]

From its inception in 1926 this district has had repeated flood control problems. Four rivers, Kings, Kern, Tule, and Kaweah, enter Tulare Lake Basin. South of Tulare Lake Basin is Buena Vista Lake. In the past Buena Vista has been used to protect Tulare Lake Basin by storing Kern River water in the former. That is how Tulare Lake Basin was protected from menacing floods in 1952. But that was not done in the great 1969 flood, the result being that 88,000 of the 193,000 acres in respondent district were flooded. The board of the respondent district—dominated by the big landowner J. A.

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[1] Calif. Stat. 1921, c. 914, § 58.

[2] Calif Water Code § 44001.

[3] *Tarpey* v. *McClure*, 190 Cal. 583, 213 P. 283.

Boswell Co.—voted 6-4 to table the motion that would put into operation the machinery to divert the flood waters to the Buena Vista Lake. The reason is that J. G. Boswell Co. had a long term agricultural lease in the Buena Vista Lake Basin and flooding it would have interfered with the planting, growing, and harvesting of crops the next season.

The result was that water in the Tulare Lake Basin rose 192.5 USGS datum. Ellison, one of the petitioners who lives in the district is not an agricultural landowner. But his residence was 15½ feet below the water level of the crest of the flood in 1969.

The respondent district has large levees; and if they are broken, damages to houses and losses of lives are imminent.

Landowners—large or small—resident or nonresident, lessees or landlords, sharecroppers[4] or owners—all should

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[4] Since 1938 sharecroppers have been included in federal regulations defining "farmers" who are entitled to vote on referenda concerning marketing quotas under the Agricultural Adjustment Act.

"*Farmers engaged in the production of a commodity.* For purposes of referenda with respect to marketing quotas for tobacco, extra long staple cotton, rice and peanuts the phrase 'farmers engaged in the production of a commodity' includes any person who is entitled to share in a crop of the commodity, or the proceeds thereof because he shares in the risks of production of the crop as an owner, landlord, tenant, or sharecropper (landlord whose return from the crop is fixed regardless of the amount of the crop produced is excluded) on a farm on which such crop is planted in a workmanlike manner for harvest: *Provided*, that any failure to harvest the crop because of conditions beyond the control of such person shall not affect his status as a farmer engaged in the production of the crop. In additon, the phrase 'farmers engaged in the production of a commodity' also includes each person who it is determined would have had an interest as a producer in the commodity on a farm for which a farm allotment for the crop of the commodity was established and no acreage of the crop was planted but an acreage of the crop was regarded as planted for history acreage purposes under the applicable commodity regulations." 7 CFR § 717.3 (b).

have a say. But irrigation, water storage, the building of levees, flood control, implicate the entire community. All residents of the district must be granted the franchise.

This case, as I will discuss below, involves the performance of vital and important governmental functions by water districts clothed with much of the paraphernalia of government. The weighting of voting according to one's wealth is hostile to our system of government. See *Stewart* v. *Parrish School Board*, 310 F. Supp. 1172, aff'd, 400 U. S. 884. As a nonlandowning bachelor was held to be entitled to vote on matters affecting education, *Kramer* v. *Union Free School District*, 395 U. S. 621, so all the prospective victims of mismanaged flood control projects should be entitled to vote in water district elections, whether they be resident nonlandowners, resident or nonresident lessees, and whether they own 10 acres or 10,000 acres. Moreover, their votes should be equal regardless of the value of their holdings, for when it comes to performance of governmental functions all enter the polls on an equal basis.

The majority, however, would distinguish the water storage district from "units of local government having general governmental powers over the entire geographic area served by the body," *Avery* v. *Midland County Board of Commissioners*, 390 U. S. 474, 485, and fit this case within the exception contemplated for "a special purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents." *Id.*, at 483–484. The *Avery* test was significantly liberalized in *Hadley* v. *Jr. College District*, 397 U. S. 50. At issue was an election for trustees of a special purpose district which ran a junior college. We said,

> ". . . since the trustees can levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and

discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in general manage the operations of the junior college, their powers are equivalent, for apportionment purposes, to those exercised by the county commissioners in *Avery*. . . . [T]hese powers, while not fully as broad as those of the Midland County Commissioners, certainly show that the trustees *perform important governmental functions* . . . and have *sufficient impact throughout the district* to justify the conclusion that the principle which we applied in *Avery* should also be applied here." *Id.*, at 53–54. (Emphasis added, footnote omitted.)

Measured by the *Hadley* test, the Tulare Lake Basin Water Storage District surely performs "important governmental functions" which "have sufficient impact throughout the district" to justify the application of the *Avery* principle.

Water storage districts in California are classified as irrigation, reclamation, or drainage districts.[5] Such state agencies "are considered exclusively governmental," their property is "held only for governmental purpose" and not in the "proprietary sense."[6] They are a "public entity," just as "any other political subdivision."[7] That is made explicit in various ways. The Water Code of California states that "all water and water rights" of the State "within the district are given, dedicated, and set apart for the uses and purposes of the district."[8] Directors of the district are "public officers of the state."[9]

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[5] Calif. Water Code § 39060.

[6] *Glen-Colusa Irrigation District* v. *Ohrt*, 31 Cal. App. 2d 619, 88 Pac. 2d 763.

[7] Calif. Gov. Code § 811.2.

[8] Section 43158. See also *id.*, § 39061.

[9] *Re Madera Irrigation Dist.*, 92 Cal. 296, 28 P. 272.

The district possesses the power of eminent domain.[10] Its works may not be taxed.[11] It carries a governmental immunity against suit.[12] A district has powers that relate to irrigation, storage of water, drainage, flood control, and generation of hydroelectric energy.[13]

Whatever may be the parameters of the exception alluded to in *Avery* and *Hadley*, I cannot conclude that this water storage district escapes the constitutional restraints relative to a franchise within a governmental unit.

II

When we decided *Reynolds* v. *Sims*, 377 U. S. 533, and discussed the problems of malapportionment we thought and talked about people—of population, of the constitutional right of "qualified citizens to vote," (*id.*, at 554) of "the right of suffrage," (*id.*, at 555) of the comparison of "one man's vote" to that of another man's vote. *Id.*, at 559. We said:

> "Legislators represent people, not trees or acres. Legislators are elected by voters, nor farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system."

It is indeed grotesque to think of corporations voting within the framework of political representation of people. Corporations were held to be "persons" for purposes both of the Due Process Clause of the Fourteenth Amend-

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[10] Calif. Water Code § 43530.

[11] *Id.*, § 43508.

[12] Calif. Gov. Code §§ 811.2; 815.

[13] Calif. Water Code §§ 42200; 43000; 43025; 44001.

ment[14] and of the Equal Protection Clause.[15] Yet it is unthinkable in terms of the American tradition that corporations should be admitted to the franchise. Could a State allot voting rights to its corporations, weighting each vote according to the wealth of the corporation? Or could it follow the rule of one corporation—one vote?

It would be a radical and revolutionary step to take, as it would change our whole concept of the franchise. California takes part of that step here by allowing corporations to vote in these water district matters[16] that entail performance of vital governmental functions. One corporation can outvote 77 individuals in this district. Four corporations can exercise these governmental powers as they choose, leaving every individual inhabitant with a weak ineffective voice. The result is a corporate political kingdom undreamed of by those who wrote our Constitution.

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[14] *Minneapolis & St. Louis R. Co.* v. *Beckwith*, 129 U. S. 26, 28.

[15] *Pembina Consolidated Silver Mining & Milling Co.* v. *Pennsylvania*, 125 U. S. 181, 188–189; *Santa Clara County* v. *Southern Pacific R. Co.*, 118 U. S. 394, 396.

[16] Calif. Water Code § 41004.